

**PEACEKEEPING AND COUNTERINSURGENCY: HOW  
U.S. MILITARY DOCTRINE CAN IMPROVE PEACEKEEPING  
IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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I. Introduction

By nearly all accounts, the largest United Nations (U.N.) peacekeeping operation in the world is failing. The mission—known until recently as MONUC<sup>1</sup>—is based in the Democratic Republic of the Congo,<sup>2</sup> where more than 18,000 U.N. troops<sup>3</sup> are engaged in an effort to quell violence in the world's deadliest conflict since World War II.<sup>4</sup> Congo is Africa's third-largest country—it extends eastward from the capital city of Kinshasa, near the continent's western coast, and

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<sup>1</sup> Effective 1 July 2010 MONUC's name has officially been changed to MONUSCO—the “Organization Stabilization Mission in the Democratic Republic of the Congo.” S. C. Res. 1925, UN Doc. S/RES/1925 (May 28, 2010) [hereinafter S.C. Res. 1925]. Because this name change is largely superficial, and because much of this article analyzes MONUC's past practices, the name “MONUC” will be used to avoid confusion. This acronym is an abbreviation for “Mission de l'Organisation des Nations Unies en République démocratique du Congo” (U.N. Organization Mission in the Democratic Republic of the Congo).

<sup>2</sup> The Democratic Republic of the Congo was known as the Belgian Congo until its independence in 1960. The country was then known as Zaire between 1971 and 1997, under the rule of Mobutu Sese Seko. The country is now commonly referred to simply as “Congo,” or as “DRC” or “DR Congo,” in order to distinguish it from the Republic of Congo, a neighboring country. In this article, the nation will be referred to as “Congo.” For historical background on Congo's name change and conflicted past, see GÉRARD PRUNIER, *AFRICA'S WORLD WAR: CONGO, THE RWANDAN GENOCIDE, AND THE MAKING OF A CONTINENTAL CATASTROPHE* (2009).

<sup>3</sup> As of 30 April 2010, MONUC's uniformed personnel strength in Congo includes 18,884 troops, 712 military observers, and 1,223 police. See MONUC: United States Mission in the Democratic Republic of Congo, MONUC Facts and Figures, available at <http://www.un.org/en/peacekeeping/missions/monuc/facts.shtml> (last visited June 25, 2010).

<sup>4</sup> The International Rescue Committee (IRC) estimates that more than five million people have already died as a result of the conflict. INT'L RESCUE COMM., *MORTALITY IN THE DEMOCRATIC REPUBLIC OF CONGO: AN ONGOING CRISIS*, at ii (2007), [http://www.theirc.org/sites/default/files/migrated/resources/2007/2006-7\\_congo\\_mortalitysurvey.pdf](http://www.theirc.org/sites/default/files/migrated/resources/2007/2006-7_congo_mortalitysurvey.pdf). Also, in 2005, the United Nations stated that the conflict in eastern Congo was the “world's worst humanitarian crisis.” Editorial, *UN Calls Eastern Congo Worst Humanitarian Crisis*, VOICE OF AM., Mar. 16, 2005, <http://www1.voanews.com/english/news/a-13-2005-03-16-voa38-67382547.html>.

encompasses a massive swath of territory in central Africa. Endemic conflict has been raging in the country for decades, and in 1998, it sparked a crisis known as Africa's World War, drawing eleven other African nations into the struggle either as mediators or parties to the conflict. Violence continues today in Congo's east. Despite a strong U.N. military presence on the ground, a yearly budget of more than \$1 billion,<sup>5</sup> and a robust mandate authorizing peacekeepers to undertake "all necessary operations" to "disrupt the military capability of armed groups that continue to use violence in [the] area,"<sup>6</sup> the conflict's death toll continues to rise, and sustainable peace and stability do not seem to be on the horizon.

In fact, as MONUC has ramped up its stabilization efforts under increasingly aggressive mandates, violence against civilians has actually seen a marked *increase* in the region.<sup>7</sup> In March 2009, MONUC began backing a Congolese army offensive—known as *Kimia II*—that aimed to forcibly disarm one of the region's rebel groups. As a result of this operation and related reprisal violence, more than 1000 civilians were killed, almost a million people have been forced to flee their homes, and more than 7000 women and girls have been raped.<sup>8</sup> The situation became so untenable that, on 12 October 2009, eighty-four humanitarian and human rights groups in Congo issued a joint statement asserting that the offensive campaign had resulted in an "unacceptable cost for the civilian population."<sup>9</sup> They called on U.N. peacekeepers to "fulfill their mandate to protect civilians," or else withdraw support for the operation.<sup>10</sup>

Just how MONUC might actually *achieve* its mandate to protect civilians, however, is exactly the question that mission commanders, the

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<sup>5</sup> The MONUC's budget from 1 July 2009 to 30 June 2010 was \$1,405,912,000. U.N. GAOR, 63d Sess., 5th Comm., Agenda Item 132, at 2, U.N. Doc. A/C.5/63/25.

<sup>6</sup> S.C. Res. 1906, at 5, U.N. Doc. S/RES/1906 (Dec. 23, 2009).

<sup>7</sup> See, e.g., Editorial, *DR Congo: Massive Increase in Attacks on Civilians: Government and UN Peacekeepers Fail to Address Human Rights Catastrophe*, HUM. RTS. WATCH, July 2, 2009, <http://www.hrw.org/en/news/2009/07/02/dr-congo-massive-increase-attacks-civilians> ("Since January 2009, nine Human Rights Watch fact-finding missions to frontline areas found a dramatic increase in attacks on civilians and other human rights abuses . . .").

<sup>8</sup> Editorial, *DR Congo: Civilian Cost of Military Operation Is Unacceptable*, HUM. RTS. WATCH, Oct. 13, 2009, <http://www.hrw.org/en/news/2009/10/12/dr-congo-civilian-cost-military-operation-unacceptable>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Security Council, and the U.N. Secretariat have been struggling to answer for more than a decade. The war in Congo is a seemingly intractable, complex, and multidimensional conflict that has confounded observers and peacemaking strategists for years. It is related to an intricate web of political, territorial, and ethnic disputes, many of which can be traced back for decades, ranging from international political rivalries to highly localized mining and land quarrels.<sup>11</sup> The conventional wisdom behind MONUC's increasingly offensive posture, expressed in Security Council Resolutions 1565, 1592, 1756, 1794, and 1856, was that a higher degree of operational force would help neutralize violent rebel groups and therefore *prevent* attacks on civilians.<sup>12</sup> Conventional wisdom, however, has been inadequate to solve Congo's complex security challenges.<sup>13</sup> Congo's conflict is not a conventional war.

Nevertheless, the facts surrounding the war in Congo are not entirely without precedent. In some ways, they are uncannily similar to those of Iraq, circa 2002: Once governed by a brutal dictatorship, the diverse nation is now plagued by violence based largely on entrenched cultural divisions and the scapegoating of a previously elite minority group. State security forces are in disarray, rival militia groups massacre and abuse civilians, and a continuous cycle of violence and instability prevents the formation of any broad-based governing coalition. Residents align with ethnic gangs out of necessity, since police protection is nonexistent and militia patronage offers the only credible

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<sup>11</sup> See, e.g., Séverine Autesserre, *D. R. Congo: Explaining Peace Building Failures, 2003-2006*, 113 REV. AFR. POL. ECON. 423, 429 (2007).

<sup>12</sup> See S.C. Res. 1565, U.N. Doc S/RES/1565 (Oct. 1, 2004) (requesting "rapid deployment of additional military capabilities for MONUC"); S.C. Res. 1592, U.N. Doc. S/RES/1592 (Mar. 30, 2005) (encouraging MONUC "to make full use of its mandate" and stressing that it "may use cordon and search tactics . . . to disrupt the military capability of illegal armed groups"); S.C. Res. 1756, U.N. Doc. S/RES/1756 (May 15, 2007); (authorizing MONUC to "support" offensive operations undertaken by the Congolese army); S.C. Res. 1794, U.N. Doc. S/RES/1794 (Dec. 21, 2007) (encouraging MONUC to "use all necessary means" to support the Congolese army in disarming "recalcitrant" armed groups); S.C. Res. 1856, U.N. Doc. S/RES/1856 (Dec. 22, 2008) (expressing "extreme concern at the deteriorating humanitarian and human rights situation" in Congo and authorizing MONUC to "coordinate" offensive operations that will be "led by and jointly planned with" the Congolese army).

<sup>13</sup> See Peter Uvin et al., *Regional Solutions to Regional Problems: The Elusive Search for Security in the African Great Lakes*, 29 FLETCHER F. WORLD AFF. 67, 68 (2005) (arguing that "conventional wisdom has been insufficient to address key security challenges" in Congo).

security option. In many regions, the complete collapse of governmental control is imminent or has already occurred.

Although these similarities are disturbing from a humanitarian perspective, they may offer a key to success for the U.N. mission in Congo. This article offers a radical, and yet straightforward, solution to the problems that have plagued peacekeeping efforts there for more than a decade: Just as the U.S. military reversed growing instability in Iraq by incorporating counterinsurgency doctrine into its war strategy, the U.N. should use counterinsurgency doctrine to reform failing missions in Congo and beyond. As debates about MONUC's mandate continue in the Security Council, the United States should use its position to promote a counterinsurgency-based approach to peacekeeping. Additionally, U.S. military and civilian agencies should assist the U.N. in its peace-building efforts in Congo by providing technical assistance and training designed to promote rule of law, good governance, and security sector reform. All of these activities are crucial elements of a counterinsurgency doctrine's approach to stabilization.

This article examines the underlying causes of the persistent failure of robust U.N. peacekeeping and shows how counterinsurgency principles can be used to reverse these failures. Part I presents a case study of the war in Congo, where the largest U.N. peacekeeping mission currently operates. This first section provides a brief history of the conflict in Congo, examines the increasingly active pacification efforts undertaken by MONUC, and analyzes MONUC's persistent failure to quell violence in the region. Part II discusses the rise of counterinsurgency doctrine in U.S. military thinking and analyzes the doctrine's applicability to peacekeeping operations. Drawing from the author's personal studies in eastern Congo,<sup>14</sup> Part III returns to the case study of Congo and provides practical recommendations for applying counterinsurgency principles to reform the peacekeeping operation there.

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<sup>14</sup> In January 2008, the author traveled to North Kivu, where the current conflict is centralized, on a research grant. Her research in eastern Congo included travel with MONUC military peacekeepers to the current flashpoints of the conflict, participation in on-the-ground military analysis by peacekeeping troops of recent battles and force movements, and candid discussions of both current frustrations and the potential applicability of alternate strategies. Research also included attendance at the Goma Peace Conference and interviews with numerous rebel soldiers, high-ranking officials in the Congolese army (FARDC), local civilians, community leaders, U.N. officials, and NGO workers [hereinafter Author's Field Research Experience]. The author holds both a B.A. and an M.A. in African Studies and is proficient in both Swahili and French—the two most prominent languages of eastern Congo.

This part presents specific strategies aimed at improving security and combating impunity in Congo and includes an overview of the Congolese military and civilian justice sectors, as well as a discussion of necessary rule of law reform.

## II. MONUC in Congo: Case Study of a Failing Mission

Although MONUC has been in Congo for a more than a decade and has taken an increasingly active peacemaking role in the country, the mission has failed to bring lasting peace to the war-torn nation, highlighting the need for effective intervention and violence prevention in the region. Indeed, although the Congolese government has requested withdrawal of U.N. troops from certain parts of the vast nation, U.N. peacekeeping chief Alain Le Roy has stated that drawdowns in Congo's conflicted east cannot yet be contemplated.<sup>15</sup> "It will take much more time before the critical tasks . . . are implemented," Le Roy has said.<sup>16</sup> Over the last ten years, the Security Council has provided MONUC with progressively more powerful mandates, authorizing aggressive forceful action on the part of U.N. troops to disarm the region's illegal militias.<sup>17</sup> However, MONUC has attempted the mandated disarmament action in concert with an undisciplined and abusive Congolese national army, and it has not provided adequate population-security measures as part of offensive campaigns.<sup>18</sup> In sum, MONUC is supporting the Congolese army in its attempts to use *conventional* warfare against *unconventional* armed insurgent groups. Unsurprisingly, these attempts are failing.

This section provides a brief history of the conflict in Congo and introduces its key players. Although the war in Congo is complex and multidimensional, a cursory discussion of Congo's numerous armed rebel groups, historical ethnic tension, and collapsed state-security sector will provide a necessary background for discussing the status of U.N. peacemaking efforts in the region. This section also provides historical analysis of MONUC's progressively aggressive mandates, as well as a discussion of U.S. military and civilian involvement in Congolese peace-building efforts, noting how the recent ramp-up of the Army's U.S.

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<sup>15</sup> Edith Honan, *U.N. to Start Troop Withdrawals from Congo in 2010*, REUTERS (Mar. 5, 2010).

<sup>16</sup> *Id.*

<sup>17</sup> See *infra* Part II.B.

<sup>18</sup> See *infra* Part II.D.

Africa Command (AFRICOM) relates to these efforts. Finally, this section discusses the failure of *Kimia II*, a recent Congolese army offensive campaign that was supported by MONUC peacekeepers and has resulted in a marked increase in violence against civilians in the region. This section concludes by showing how this offensive disarmament campaign contradicted basic principles of counterinsurgency doctrine.

#### A. A History of the War in Congo

The current conflict in Congo has roots in the 1994 Rwandan Genocide, where Hutu state military forces known as FAR<sup>19</sup> and a related militia, the Interahamwe, directed the slaughter of at least half-a-million Rwandan civilians.<sup>20</sup> More than three-quarters of the nation's Tutsi population were killed during a one-hundred-day campaign of brutal and systematic extermination.<sup>21</sup> Moderate Hutus who opposed the killings, or resisted the call to participate, were also targeted.<sup>22</sup> As Tutsis living in refugee camps in neighboring Uganda invaded to stop the killings, a wave of Hutu refugees fled across the border into eastern Congo.<sup>23</sup> Many of the perpetrators of the Rwandan genocide found shelter among these refugees,<sup>24</sup> carrying hatred and fear into Congo's

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<sup>19</sup> Forces Armées Rwandaises (Rwandan Armed Forces).

<sup>20</sup> See ALISON DES FORGES, LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA 16 (Hum. Rights Watch 1999).

<sup>21</sup> INTERNATIONAL PANEL OF EMINENT PERSONALITIES, AFRICAN UNION, RWANDA: THE PREVENTABLE GENOCIDE ¶ 14.80 (2000), [http://www.africa-union.org/Official\\_documents/reports/Report\\_rwanda\\_genocide.pdf](http://www.africa-union.org/Official_documents/reports/Report_rwanda_genocide.pdf) [hereinafter INTERNATIONAL PANEL OF EMINENT PERSONALITIES, AFRICAN UNION]. Jean Kambanda, who was Rwandan Prime Minister during the genocide, admitted during his trial at the International Criminal Tribunal for Rwanda (ICTR), that the genocide had been planned in advance and that its purpose was to "exterminate" the civilian population of Tutsi. Prosecutor v. Kambanda, No. ICTR 97-23-S, Judgment, ¶ 39 (Sept. 4, 1998), reprinted in 37 I.L.M. 1413 (1998). He stated, "Mass killings of hundreds of thousands occurred in Rwanda, including women and children, old and young, who were pursued and killed at places where they sought refuge: prefectures, commune offices, schools, churches, and stadiums." *Id.* at 1420.

<sup>22</sup> INTERNATIONAL PANEL OF EMINENT PERSONALITIES, AFRICAN UNION, *supra* note 21, ¶ 14.17.

<sup>23</sup> INT'L CRISIS GROUP (ICG), NORTH KIVU, INTO THE QUAGMIRE?: AN OVERVIEW OF THE CURRENT CRISIS IN NORTH KIVU, ICG KIVU REP. NO. 1, at 3 (1998) [hereinafter ICG KIVU REP. NO. 1]. Although Congo was known as "Zaire" during the rule of Mobutu Sese Seko, which lasted until 1998, this Article uses the name "Congo" to avoid confusion, regardless of the year in of an event.

<sup>24</sup> *Id.*

own population, where indigenous Hutu and Tutsi already lived among members of other Congolese ethnic groups.

At the time of the genocide, the eastern part of Congo had acute ethnic tensions of its own. “Nowhere in [Congo] has the question of citizenship been as contentious as in the Kivu province,” the International Crisis Group stated in 1998.<sup>25</sup> North Kivu, which borders Rwanda, “has over twenty ethnic groups, each claiming to be more indigenous than the others.”<sup>26</sup> Roughly half the pre-genocide inhabitants of North Kivu were Hutu or Tutsi and spoke Kinyarwanda, the national language of Rwanda.<sup>27</sup> Although many Kinyarwanda speakers in Congo descend from families that have lived in the country since before the nineteenth century, other ethnic groups have often questioned Kinyarwanda speakers’ Congolese citizenship, claiming that they are “Rwandans” or “foreigners.”<sup>28</sup> In 1987, for instance, municipal elections in North Kivu had to be cancelled when riots broke out after local authorities refused to allow Kinyarwanda speakers (both Hutu and Tutsi) to vote.<sup>29</sup>

In short, eastern Congo was already a powder keg of ethnic tension in 1994, when more than one million more Kinyarwanda speakers fled into the area,<sup>30</sup> igniting a decades-old conflict. The FAR and Interahamwe genocidaires from Rwanda began spreading anti-Tutsi sentiment among Congo’s Hutu population and other Congolese ethnic groups already disposed to view Tutsi as “foreign,” further blaming Tutsis for the region’s existing problems.<sup>31</sup> This extremist rhetoric prompted attacks against Congolese Tutsi, many of whom fled to Rwanda or Uganda.<sup>32</sup>

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<sup>25</sup> *Id.* at 16.

<sup>26</sup> *Id.*

<sup>27</sup> Autesserre, *supra* note 11, at 426–27

<sup>28</sup> *Id.*; INT’L CRISIS GROUP, CONGO AT WAR: A BRIEFING OF THE INTERNAL AND EXTERNAL PLAYERS IN THE CENTRAL AFRICAN CONFLICT, REP. NO. 2, at 4 (1998).

<sup>29</sup> ICG KIVU REP. NO.1, *supra* note 23, at 16.

<sup>30</sup> *Id.*

<sup>31</sup> *See id.* at 6, 17.

<sup>32</sup> *Id.* at 17.

Soon after fleeing to Congo, the FAR and Interahamwe combatants responsible for the genocide formed a militia known as the Army for the Liberation of Rwanda (ALiR), which began to carry out cross-border attacks against Rwanda.<sup>33</sup> The ALiR also targeted U.S. tourists because of U.S. support for the post-genocide Rwandan government.<sup>34</sup> Its goal was to return to Rwanda and reinstate Hutu leadership, and possibly complete the genocide.<sup>35</sup> The militia gained new recruits from the Hutu refugee camps within Congo,<sup>36</sup> indoctrinating and training them for a planned invasion of Rwanda. Rwanda responded to this threat with direct military incursions into Congo.<sup>37</sup> Finally, after stating that Congolese President Mobutu Sese Seko was willfully harboring this hostile Hutu militia, Rwanda began supporting an insurgency to topple Mobutu's presidency.<sup>38</sup>

In 1997, Rwanda-backed insurgents carried out a successful coup against Mobutu, and rebel leader Laurent Désiré Kabila became the country's new president.<sup>39</sup> Although Kabila owed much of his success against Mobutu's forces to assistance from Rwanda and Uganda, as President, he sought to distance himself from these domestically controversial, "pro-Tutsi" allies.<sup>40</sup> The domestic undercurrent in Congo was predominantly anti-Tutsi and anti-"foreigner," so Kabila sought to cleanse himself of his pro-Tutsi associations in order to counter accusations that he was a "Tutsi puppet" and consolidate support for his presidency.<sup>41</sup> In 1998, Kabila moved to purge Rwandan soldiers from the Congolese army and to expel Rwandan military units from Congo.<sup>42</sup> He also began seeking alliances with the Hutu perpetrators of the Rwandan genocide and other anti-Tutsi groups,<sup>43</sup> calling on Congolese

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<sup>33</sup> *Id.* at 5.

<sup>34</sup> U.S. Dept. of State, Appendix B: Background Information on Terrorist Groups, available at <http://www.state.gov/s/ct/rls/crt/2000/2450.htm> (last visited July 21, 2010) (describing the Army for the Liberation of Rwanda (ALIR)).

<sup>35</sup> *Id.*

<sup>36</sup> ICG KIVU REP. NO.1, *supra* note 23, at 6.

<sup>37</sup> *Id.* at 5.

<sup>38</sup> The insurgent group was known as the Alliance of Democratic Forces for the Liberation of Congo/Zaire (ADFL).

<sup>39</sup> See Filip Reyntjens, *The Second Congo War: More than a Remake*, 98 AFR. AFF. 241, 245 (1999).

<sup>40</sup> *See id.*

<sup>41</sup> *See id.*

<sup>42</sup> See Tatiana Carayannis, *The Complex Wars of the Congo: Towards a New Analytical Approach*, 38 J. ASIAN & AFR. STUD. 232, 242-43 (2003).

<sup>43</sup> See INT'L CRISIS GROUP, AFRICA'S SEVEN-NATION WAR AFRICA REP. NO. 4, at 26 (May 21, 1999) [hereinafter ICG AFR. REP. NO. 4].



people to “take up arms, even traditional weapons—bows and arrows, spears and other things” to kill Tutsi; “otherwise they will make us their slaves.”<sup>44</sup> Rwanda and Uganda, threatened by Kabila’s swift change in attitude, responded with military force.<sup>45</sup> Kabila, in turn, looked to Zimbabwe, Angola, Namibia, and Chad for support,<sup>46</sup> and Congo quickly became the theater of a multi-nation conflict commonly known as “Africa’s first world war.”<sup>47</sup>

In 1999, the U.N. and the Organization of African Unity brokered a ceasefire that was signed by all seven warring states and multiple armed rebel groups, ostensibly ending the war.<sup>48</sup> That same year, the Security Council dispatched a 90-person military observation team to the region to monitor the ceasefire.<sup>49</sup> However, violence in Congo continued since then without abatement, and MONUC’s role soon shifted from that of peace observation team, tasked with simply monitoring a peace that already existed, to a full-scale military peacekeeping mission, tasked with stabilizing a conflict and creating peace where none existed.<sup>50</sup>

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<sup>44</sup> Ann Simmons, *New Genocide Is Feared in Festering Congo*, L.A. TIMES, Oct. 22, 1998, <http://articles.latimes.com/1998/oct/22/news/mn-35103>.

<sup>45</sup> See Carayannis, *supra* note 42, at 243.

<sup>46</sup> ICG AFR. REP. NO. 4, *supra* note 43, at 1.

<sup>47</sup> See, e.g., Int’l Crisis Group, DR Congo, *available at* <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo.aspx> (last visited July 22, 2010) (calling the conflict “Africa’s first world war”). At its height, this conflict involved twelve African countries, either militarily or as mediators. ICG AFRICA REP. NO. 4., *supra* note 43, at i.

<sup>48</sup> Lusaka Ceasefire Agreement, July 23, 1999, U.N. Doc. S/1999/815, annex [hereinafter Lusaka Ceasefire Agreement].

<sup>49</sup> See S.C. Res. 1258, U.N. Doc S/RES/1258 (Aug. 6, 1999) (calling for 90 “UN military liaison personnel” to assist in “developing modalities for the Implementation of the Agreement”); S.C. Res. 1279, U.N. Doc. S/RES/1279 (Nov. 30, 1999) (stating that this team would henceforth constitute MONUC and calling for a supplementary force of 500 military observers).

<sup>50</sup> Security Council Resolution 1291 increased the authorized number of military personnel in MONUC to 5537 and bestowed a Chapter VII mandate on the mission. This resolution authorized MONUC to “take the necessary action” “as it deems it within its capabilities” to protect U.N. personnel and “civilians under imminent threat of physical violence.” S.C. Res. 1291, U.N. Doc. S/RES/1291 (Feb 24, 2000). The U.N. Secretariat then put forward an “updated concept of operations” in 2001, setting forth a four-phase plan for building up MONUC security capability.

## B. MONUC's Increasingly Active Peacemaking Role

In the ten years since the Security Council first authorized MONUC's deployment to Congo, the mission has received increasingly powerful mandates. Nevertheless, MONUC has failed to bring lasting peace to the region. Instead, the U.N. has struggled to increase mission effectiveness in the absence of a clear overall strategy for long-term peacemaking. This subsection will discuss the incremental development of an active, offensive role for MONUC, revealing how the mission's increasingly powerful mandates have failed to usher-in long-term stability.

The *Lusaka Ceasefire Agreement*, signed 10 July 1999, specifically requested a U.N. peacekeeping force, pursuant to Chapter VII of the U.N. Charter,<sup>51</sup> to "track down all armed groups in the DRC."<sup>52</sup> However, a U.N. study at the time estimated that a massive force of 100,000 troops would be required to adequately take on this task.<sup>53</sup> Additionally, it became clear from continued military activity in the agreement's immediate aftermath that, when peacekeepers arrived, there would be no pre-existing peace to "keep."<sup>54</sup> At the time of the Lusaka accord, an International Crisis Group report called the agreement's request for U.N. peacekeepers an "unrealistic" but "well calculated political move."<sup>55</sup> The report further stated:

The request is based on the fact that the UN recently approved a massive peacekeeping operation for Kosovo. African leaders are putting the UN and Western governments on the spot; failure to approve a UN peacekeeping force under the terms put forward by the Lusaka summit will be interpreted as a display of double standards. The Somali experience, where United States Troops, under a UN mandate, were killed in theatre still haunts Western governments, making it difficult for

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<sup>51</sup> U.N. CHARTER arts. 39–51 (addressing "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" within Chapter VII).

<sup>52</sup> Lusaka Ceasefire Agreement, *supra* note 48.

<sup>53</sup> INT'L CRISIS GROUP, THE AGREEMENT ON A CEASE-FIRE IN THE DEMOCRATIC REPUBLIC OF CONGO, REP. NO. 5, at 27 (Aug. 20, 1999) [hereinafter ICG DR OF CONGO, REP. NO. 5].

<sup>54</sup> *Id.* at 26.

<sup>55</sup> *Id.*

them to approve a full-fledged UN operation in the DRC.<sup>56</sup>

Indeed, as noted above, the original U.N. force authorized in August, 1999, was made up of just 90 “UN military liaison personnel” mandated to assist in “developing modalities for the implementation” of the ceasefire agreement.<sup>57</sup>

This team was plainly inadequate to stabilize the ongoing conflict in the region. In fact, on the same day the ceasefire was signed, Rwandan Vice President Paul Kagame questioned the U.N.’s ability to pacify the region: “I know how to fight insurgents,” he remarked; “[D]oes the UN also know?”<sup>58</sup> Kagame had also expressed his intention to ignore the ceasefire if troops fighting on the other side did the same:

I can’t stop the Zimbabweans doing whatever they want. They can decide to take the whole of their army to Congo even after signing the peace agreement. I can’t stop them. But for Rwanda to defend itself, that is a different matter. We have the capacity to defend our country and continue fighting in Congo for a long time with all these problems that you have mentioned. And I think the Zimbabweans know that well. Let them get the message very clear. They came in with hot air, saying they were going to march to the border. You ask them what happened.<sup>59</sup>

As might have been predicted, in the immediate aftermath of the Lusaka accord, violations of the ceasefire were reported from all sides.<sup>60</sup>

By November 1999, it was clear that additional personnel were needed, prompting the U.N. Security Council to authorize an additional contingent of 500 military observers for Congo, noting that this team would constitute the “United Nations Mission in the Democratic

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<sup>56</sup> *Id.*

<sup>57</sup> See S.C. Res. 1258, *supra* note 48 (calling for ninety “UN military liaison personnel” to assist in “developing modalities for the Implementation of the Agreement”).

<sup>58</sup> ICG DR OF CONGO, REP. NO. 5, *supra* note 53, at 17 (quoting Paul Kagame, at the time Rwanda’s Vice President).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 18.

Republic of the Congo” (MONUC).<sup>61</sup> As fighting continued in February 2000, the Security Council increased the authorized number of military personnel in MONUC to 5537 and bestowed a Chapter VII mandate on the mission, giving peacekeepers legal authorization to use force.<sup>62</sup> This resolution authorized peacekeepers to “take the necessary action” as they deem “within [their] capabilities” to protect U.N. personnel and civilians under “imminent threat of physical violence.”<sup>63</sup>

Finally, in 2001, as the war continued to rage, the U.N. Secretariat put forward an updated concept of operations for MONUC.<sup>64</sup> This document set forth a new, four-part plan for increasing MONUC’s capacity to effectively provide security to the local population.<sup>65</sup> In 2003, the Security Council, acting on a recommendation from the Secretary General, again authorized an increase in MONUC troop numbers, this time nearly doubling its force strength.<sup>66</sup> This resolution—Security Council Resolution 1493—established MONUC’s role as an instrument of stabilization and active reform, rather than a more limited operation tasked only with protecting civilians under “imminent” threat.<sup>67</sup> In it, the Security Council “encourag[ed]” peacekeepers “to provide assistance, during the transition period, for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections.”<sup>68</sup> The 2003 resolution also authorized MONUC “to assist the Government of National Unity and

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<sup>61</sup> S.C. Res. 1279, *supra* note 49.

<sup>62</sup> For a discussion of Chapter VII and its relation to the legal use of force, see *infra* Part V; S.C. Res. 1291, *supra* note 50.

<sup>63</sup> S.C. Res. 1279, *supra* note 49.

<sup>64</sup> Eighth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, UN Doc. S/2001/572 (June 8, 2001) [hereinafter Eighth Report]. See also S.C. Res. 1355, U.N. Doc. S/RES/1355 (June 15, 2001) (calling the Secretary General’s recommendations an “updated concept of operations”).

<sup>65</sup> Eighth Report, *supra* note 64.

<sup>66</sup> S.C. Res. 1493, U.N. Doc. S/RES/1493 (July 28, 2003).

<sup>67</sup> *Id.* para. 25.

<sup>68</sup> *Id.* Earlier in the same year, a French-led “Interim Emergency Multinational Force” had intervened when MONUC failed to contain violence in Congo’s Ituri region. This force was authorized by Security Council Resolution 1484 in 2003. S.C. Res. 1484, U.N. Doc. S/RES/1484 (May 30, 2003).

Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process” and to take necessary actions “to contribute to the improvement of the security conditions in which humanitarian assistance is provided.”<sup>69</sup>

In the seven intervening years since 2003, the U.N. has continued to ramp-up its operations in the region, providing increasingly higher troop levels,<sup>70</sup> more robust mandates, and a variety of new stabilization strategies. For instance, in 2005, the Security Council authorized MONUC to use force much more actively, including in offensive “cordon and search tactics” against “illegal armed groups.”<sup>71</sup> The Resolution stated:

MONUC is authorized to use all necessary means, within its capabilities and in the areas where its armed units are deployed, to deter any attempt at the use of force to threaten the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese, in particular the ex-FAR and Interahamwé, encourages MONUC in this regard to continue to make full use of its mandate under resolution 1565 in the eastern part of the Democratic Republic of the Congo, and stresses that, in accordance with its mandate, MONUC may use cordon and search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence in those areas.<sup>72</sup>

By 2007, violence had still not abated, and MONUC’s mandate was again revised to become even more aggressive: Security Council Resolution 1756 called on MONUC to “assist the Government of the Democratic Republic of Congo in establishing a stable security environment in the country” and authorized peacekeepers to “support operations led by the Congolese army integrated brigades deployed in the

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<sup>69</sup> S.C. Res. 1493, *supra* note 66.

<sup>70</sup> See S.C. Res. 1565, *supra* note 12 (authorizing 5900 more troops); S.C. Res. 1635, U.N. Doc. S/RES/1635 (Oct. 28, 2005) (300 more troops); S.C. Res. 1736, U.N. Doc. S/RES/1736 (Dec. 22, 2006) (916 more troops); S.C. Res. 1843, U.N. Doc. S/RES/1843 (Nov. 20, 2008) (2785 more troops).

<sup>71</sup> S.C. Res. 1592, *supra* note 12.

<sup>72</sup> *Id.*

eastern part of the Democratic Republic of Congo.”<sup>73</sup> Such actions were to be undertaken “with a view to[ward]”:

- Disarming the recalcitrant local armed groups in order to ensure their participation in the disarmament, demobilization and reintegration process and the release of children associated with those armed groups;
- [d]isarming the foreign armed groups in order to ensure their participation in the disarmament, demobilization, repatriation, resettlement and reintegration process and the release of children associated with those armed groups; [and]
- [p]reventing the provision of support to illegal armed groups, including support derived from illicit economic activities.<sup>74</sup>

Security Council Resolution 1794, passed later in the same year, took the mandate even further, “encourag[ing]” MONUC to:

*use all necessary means*, within the limits of its capacity and in the areas where its units are deployed, to support the [Congolese army] integrated brigades with a view to disarming recalcitrant foreign and Congolese armed groups, in particular the FDLR, ex-FAR/Interahamwe and the dissident militia of Laurent Nkunda.<sup>75</sup>

In sum, since 1999 the Security Council has incrementally increased MONUC’s power to take aggressive action aimed at disarming the rebel groups responsible for much of the violence in eastern Congo. However, prior to 2008, MONUC’s mandates imagined the Congolese army taking the lead in planning offensive action against illegal armed groups, with MONUC playing only a secondary, supporting role. In 2008, however, this vision and structure dramatically changed—at least in theory.

Security Council Resolution 1856, passed on 22 December 2008, called on MONUC to take the initiative by “coordinat[ing] operations” to disarm local armed groups and carrying out “jointly planned” operations,

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<sup>73</sup> S.C. Res. 1756, *supra* note 12.

<sup>74</sup> *Id.*

<sup>75</sup> S.C. Res. 1794, *supra* note 12 (emphasis added).

rather than just assisting in operations led by the Congolese army.<sup>76</sup> Nevertheless, despite of these escalated mandates for military action, wide latitude on the lawful use of force, and ambitious stabilization goals, endemic violence persists in Congo. Simply ratcheting-up MONUC's authorized force level, troop strength, or aggressive posture has failed to bring lasting peace to the region, reflecting the pressing need for a new strategy.<sup>77</sup>

### C. The Persistence of Violence Against Civilians in Eastern Congo

Despite increasingly robust attempts by the Security Council to forcibly disarm the rebel groups responsible for civilian violence in Congo, militias are still active and powerful in the eastern part of the country. For instance, the previously-mentioned Hutu extremist group, made up partially of ex-FAR/Interahamwe perpetrators of the Rwandan genocide,<sup>78</sup> has not been disarmed or repatriated to Rwanda. Instead, in 2001, the group simply changed its name to the FDLR (Democratic Forces for the Liberation of Rwanda)<sup>79</sup> and continued its attacks on Congolese Tutsi and other civilians.<sup>80</sup> The FDLR is well-trained and highly-entrenched, and it essentially controls many areas of eastern Congo. In direct opposition to this Hutu extremist group is the predominantly Tutsi CNDP—the National Congress for the Defense of the People.<sup>81</sup> The CNDP was, until recently, an illegal militia. Last year, however, the group converted itself into a political party, and its soldiers

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<sup>76</sup> S.C. Res. 1856, *supra* note 12.

<sup>77</sup> As this article goes to print, the U.N. has begun to make certain reforms to its operations in the Congo. Under Security Council Resolution 1906, passed in response to widespread disapproval of MONUC's recent actions in support of the Congolese army's *Kimia II* offensive, MONUC is now mandated to support only operations that it has jointly planned. S.C. Res. 1906, *supra* note 6. Additionally, MONUC has stated that it will undertake to increase the provision of civilian security as part of future disarmament operations and that it will refrain from supporting any operations in which known human rights abusers are taking part. These changes, if implemented, would be very positive reforms for MONUC, and would represent an important step toward bringing MONUC's operations closer in line with counterinsurgency principles.

<sup>78</sup> For a discussion of the ALiR, see *supra*, text accompanying note 33.

<sup>79</sup> In French, the name is "Forces démocratiques de libération du Rwanda."

<sup>80</sup> See U.S. DEP'T OF STATE, OFF. OF THE COORDINATOR FOR COUNTERTERRORISM, COUNTRY REPORTS ON TERRORISM 2006 (Apr. 30, 2007), <http://www.state.gov/s/ct/rls/crt/2006/82738.htm> ("In 2001, the Democratic Forces for the Liberation of Rwanda (FDLR) supplanted the Army for the Liberation of Rwanda (ALIR) . . .").

<sup>81</sup> In French, Congrès national pour la défense du peuple.

were nominally “integrated” into the Congolese national army.<sup>82</sup> The sustainability of this integration, and its implications for local civilians, remains to be seen: The CNDP has in the past claimed that it is protecting the local Tutsi population from extermination by Hutu extremists and cannot disarm until the threat posed by the FDLR has been satisfactorily addressed. Adding to the intense civilian insecurity in the region is a semi-independent group of FDLR deserters known as the “Rasta”<sup>83</sup> and dozens of citizens’ militia groups known as “Mai Mai”—brutal byproducts of intense insecurity in the region that have been terrorizing Congolese civilians for years.<sup>84</sup>

Furthermore, the Congolese national army is currently creating more civilian violence than it is preventing. The army is fractured, weak, and highly undisciplined. It is the product of multiple rebel disarmament schemes undertaken with the goal of “integrating” members of powerful illegal armed groups into a unified national army.<sup>85</sup> The attempted integrations have taken place largely through a process known as “mixage,” wherein Congolese army brigades were created out of three or more rebel militia “battalions,” with no battalion-level integration and very minimal training.<sup>86</sup> As a result, the vast majority of army “recruits” in eastern Congo over the past decade have been ex-rebel soldiers who joined through disarmament schemes.<sup>87</sup> Compounding these problems, commanders are often unable to pay their troops or buy supplies—according to one scholar, officials in Kinshasa have embezzled funds earmarked for army integration and training.<sup>88</sup> In many locations in North Kivu, barracks are non-existent, and troops must either sleep outside or raid neighboring villages to find shelter.<sup>89</sup> Partially as a result

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<sup>82</sup> See, e.g., HUM. RTS. WATCH, RENEWED CRISIS IN NORTH KIVU 17–18 (2007) [hereinafter HUM. RTS. WATCH].

<sup>83</sup> INT’L CRISIS GROUP, A COMPREHENSIVE STRATEGY TO DISARM THE FDLR (July 9, 2009) [hereinafter INT’L CRISIS GROUP].

<sup>84</sup> See PRUNIER, *supra* note 2, at 173–77; HUM. RTS. WATCH, SEEKING JUSTICE: THE PROSECUTION OF SEXUAL VIOLENCE IN THE CONGO WAR 51 (2005) [hereinafter HUM. RTS. WATCH].

<sup>85</sup> See generally HUM. RTS. WATCH, *supra* note 82.

<sup>86</sup> See *id.* at 19.

<sup>87</sup> In fact, there appears to be no widely available process, other than disarmament, for joining the Congolese army. Interview with General Mayala, Commander of the 8th Military Region, FARDC, in Goma, Congo (Jan. 2008).

<sup>88</sup> Autesserre, *supra* note 11, at 429. As an example, one Congolese army brigade in North Kivu had not been paid in four months at the time of the author’s interview in January 2008.

<sup>89</sup> Interview with U.N. Military Personnel, in North Kivu, Congo (Jan. 2008) hereinafter U.N. Military Personnel Interview]. Barracks that do exist in many parts of North Kivu



of these funding and training problems, abuses by Congolese army soldiers are, by one estimation, the most common form of low-level violence against civilians in Congo's east.<sup>90</sup>

Additionally, justice sector reform is sorely needed in the region. There is currently no effective military justice system capable of removing perpetrators of rape, killings, or other human rights abuses from the Congolese army.<sup>91</sup> In some areas, Congolese army brigades are still "non-integrated"—that is, they are essentially still soldiers from a particular "disarmed" rebel militia, now considered Congolese national army.<sup>92</sup> In a non-integrated brigade, ex-rebel soldiers—acting in the same units in which they used to act, carrying the same guns that they used to carry, and sitting in the same places on the road where they used to sit as "rebels"—are now, by force of language alone, considered "Congolese army."<sup>93</sup> Some battalions of these non-integrated army brigades have resisted the push for increased integration and centralization in army structure, not wanting to move to new areas of the country and give up the lucrative mineral mines or road blocks used to extort money from local civilians.<sup>94</sup>

Unsurprisingly, violence against civilians persists as much from these "Congolese army" soldiers as it does from rebel militias. However, MONUC has not taken an active role in attempting to reform or vet the Congolese army. Instead, the Security Council has called on *Congolese authorities* to "intensify as a matter of urgency *their* efforts to reform the security sector,"<sup>95</sup> rather than providing a blueprint for reform and encouraging or requiring Congo's leadership to enact it. Congolese authorities, meanwhile, have failed to initiate the necessary reforms on their own.

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are incredibly basic: they are makeshift camps that resemble squatter settlements. *See also* Autesserre, *supra* note 11, at 429.

<sup>90</sup> Autesserre, *supra* note 11, at 429.

<sup>91</sup> *See infra* Part IV.B.5.

<sup>92</sup> Author's Field Research Experience, *supra* note 14.

<sup>93</sup> *See* HUM. RTS. WATCH, *supra* note 82, at 17–18.

<sup>94</sup> Interview with MONUC military personnel, in Walikale, Congo (Jan. 2008).

<sup>95</sup> S.C. Res. 1794, *supra* note 12 (emphasis added).

#### D. The Recent Crisis

In December 2008, the political situation in North Kivu changed dramatically. After many years of reported *cooperation* with anti-Tutsi FDLR rebels, and many years of hostile rhetoric and offensive action *against* pro-Tutsi CNDP rebels, Congolese leadership in Kinshasa suddenly switched allegiances. After secret negotiations, Congo struck a deal with Rwanda for joint military action *against* the FDLR.<sup>96</sup> Perhaps more surprisingly, Congolese leadership also declared that the CNDP—a Tutsi rebel group that was formerly considered an enemy of the state—could integrate into the Congolese national army *and assist in the forcible disarmament campaign* against its predominantly Hutu FDLR enemies.<sup>97</sup> The MONUC peacekeepers were later enlisted to provide military and logistical support to the operation.<sup>98</sup>

Unfortunately, the offensive campaign has been highly unsuccessful at disarming the FDLR rebels, and it has carried a high civilian cost. The Congolese army continues to suffer extreme discipline problems, and the swift, superficial, and whole-scale “integration” of the CNDP rebel group into its ranks have compounded this problem. According to the International Crisis Group, the integration was more “an effort to dismantle rebel capacities, rather than a genuine effort to rebuild the army.”<sup>99</sup> During the offensive campaign, the Congolese army units made up largely of ex-CNDP rebels ransacked villages, attacked civilians accused of being FDLR collaborators, raped women and young girls, looted, and torched homes.<sup>100</sup> By one account, the Congolese army purposely killed at least 270 civilians between March and November 2009.<sup>101</sup> Additionally, local hospitals have reported that already high rape numbers doubled or tripled during the military operation, and the majority of cases investigated by one Human Rights Watch observer were attributed to soldiers from the Congolese army.<sup>102</sup> These atrocities put MONUC in a problematic position: Peacekeepers provided the

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<sup>96</sup> See INT’L CRISIS GROUP, *supra* note 83, at 2–3.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 4–5.

<sup>99</sup> INT’L CRISIS GROUP, CONGO: FIVE PRIORITIES FOR A PEACEBUILDING STRATEGY 11 (2009) [hereinafter ICG AFR. REP. NO. 150].

<sup>100</sup> Editorial, *supra* note 7.

<sup>101</sup> Hum. Rts. Watch, Eastern DR Congo: Surge in Army Atrocities, Nov. 2, 2009, available at <http://www.hrw.org/en/news/2009/11/02/eastern-dr-congo-surge-army-atrocities> [hereinafter Hum. Rts. Watch].

<sup>102</sup> Editorial, *supra* note 7.

Congolese army operation with “tactical expertise, transport and aviation support, . . . food rations, fuel, and medical support . . . , at a cost of over well over US\$6 million,”<sup>103</sup> and MONUC support for such an undisciplined and problematic offensive could implicate the U.N. in violations of the laws of war.<sup>104</sup>

Worst of all, the *Kimia II* campaign was almost entirely offensive in nature. MONUC and the Congolese army did not provide adequate population security in connection with the operation.<sup>105</sup> As a result, they have failed to protect Congolese civilians against brutal FDLR retaliatory attacks.<sup>106</sup> As FDLR rebels, who had retreated westward during the offensive campaign, began to return to areas vacated by the U.N. and Congolese army, they unleashed a wave of vicious reprisal violence against civilians. As an example, on 10 May 2009 Human Rights Watch reported:

FDLR combatants brutally massacred at least 86 civilians, including 25 children, 23 women, and seven elderly men at Busurungi, in the Waloaloanda area of Walikale territory, North Kivu. Twenty-four others were seriously wounded. Some of the victims were tied up and executed; others were shot or their throats were slit by knives or machetes as they tried to flee. A number of people were burned to death when FDLR combatants deliberately locked them in their homes and torched their village.<sup>107</sup>

Similar attacks have been reported in recent months throughout eastern Congo. The International Crisis Group has observed that after the Congolese army withdrew from its offensive positions, “FDLR units regrouped and started to reoccupy their former positions while retaliating violently against civilians.”<sup>108</sup> The report further states:

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<sup>103</sup> Editorial, *supra* note 8.

<sup>104</sup> Hum. Rts. Watch, *supra* note 101 (“Some Congolese army soldiers are committing war crimes by viciously targeting the very people they should be protecting. MONUC’s continued willingness to provide support for such abusive military operations implicates them in violations of the laws of war.”). See also Editorial, *UN Discussing DR Congo Withdrawal*, BBC NEWS, Mar. 3, 2010, <http://news.bbc.co.uk/2/low/africa/8548794.stm> (asserting that the U.N. was “last year accused of human rights abuses” in Congo).

<sup>105</sup> Editorial, *supra* note 7.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> ICG AFR. REP. NO. 150, *supra* note 99, at 10.

FDLR combatants returned to Masisi, Walikale and Lubero. In the three weeks following the operation they carried out seventeen attacks on civilians, targeting humanitarian convoys in particular. Between 25 February and 6 March, 34 civilians were killed and 22 injured. In addition, rape and looting were reported. An additional 100,000 civilians were uprooted in North Kivu in March and April, and dozens of villages were pillaged and set ablaze in FDLR-dominated areas of South Kivu. By 10 April, the UN Office for the coordination of Humanitarian Affairs (OCHA) confirmed that in the first quarter of 2009, attacks against aid workers had risen by 22 per cent . . . .<sup>109</sup>

Despite numerous civilian casualties, the disarmament campaign has had very limited success. During the first four months of 2009, only 578 FDLR combatants were disarmed, and many of these individuals surrendered without weapons.<sup>110</sup> In one calculation by Human Rights Watch, for every rebel combatant who was “disarmed” in the recent offensive, one civilian was killed, seven women were raped, six houses were burned down, and 900 people were forced to flee.<sup>111</sup> As Congolese army troops moved into FDLR-controlled areas during the campaign, the majority of FDLR combatants apparently simply dispersed into small units and moved toward Congo’s interior—entirely avoiding direct confrontation with Congolese army troops and often committing mass atrocities and killing civilians in the process of retreating. Worse, FDLR combatants who *have* been disarmed are reportedly being rapidly replaced by new recruits, making the operation’s overall effectiveness highly questionable.<sup>112</sup>

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<sup>109</sup> *Id.* See also Press Release, DR Congo Top U.N. Official Condemns Terror and Upheaval, *supra* note 91; IRIN, DRC: Attacks Against Aid on the Rise, Apr. 10, 2009, available at <http://www.irinnews.org/Report.aspx?ReportID=83885>.

<sup>110</sup> ICG AFR. REP. NO. 150, *supra* note 99, at 10.

<sup>111</sup> Editorial, *supra* note 8. According to a recent *Agence France-Presse* (AFP) report, the Congolese army has claimed that an additional 600 FDLR fighters were captured between January and March 2010. See Editorial, *Over 600 Rwandan Rebels Killed or Captured: DR Congo Army*, AFP, Mar. 17, 2010, <http://www.google.com/hostednews/afp/article/ALeqM5hoERZAQW2uPr8NBulTv6qXKjHkxg>. This number has not been independently verified, but even if it were corroborated, the total number of FDLR captured is likely not sustainable and does not begin to justify the intense civilian insecurity and endemic abuse that have marked the recent disarmament campaign.

<sup>112</sup> Editorial, *supra* note 8. *But see supra* note 77 (discussing MONUC’s potential new approach).

### E. The Potential for U.S. Involvement in Peacekeeping Operations in Congo

The persistence of violence against civilians and the incapacity of the Congolese army and military justice system to provide safety and security to Congolese civilians present a situation ripe for U.S. involvement and support. The United States is already MONUC's largest financial supporter, contributing \$200 million dollars per year to the peacekeeping mission,<sup>113</sup> and the United States is in a position to greatly impact MONUC's structure and mandate through its role on the Security Council. The United States has also been involved in independent conflict prevention efforts in Congo, through its support of numerous peace deals in the region, and through the provision of millions of dollars in assistance to civil humanitarian assistance programs in the country.<sup>114</sup> In other words, the United States is already heavily invested in Congo, and with good reason: Secretary of State Hillary Clinton has asserted that pervasiveness of rape and gender-based violence in Congo today is "one of mankind's greatest atrocities."<sup>115</sup> Additionally, endemic conflict in Africa hampers U.S. counterterrorism efforts.<sup>116</sup> For these and other reasons, Congo is, in the words of the U.S. Agency for International Development, "of long-term interest to the United States."<sup>117</sup>

There have been many calls for increased U.S. action in Congo.<sup>118</sup> For example, Michael O'Hanlon, a Senior Fellow at The Brookings Institution, wrote a 2009 *Washington Post* op-ed urging the United States to send troops to Congo:

If the situation is to improve, we need to do the one thing that is required above all others—strengthen security, especially in eastern Congo. And by now we

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<sup>113</sup> David McKeeby, *United States Condemns Renewed Conflict*, AMERICA.GOV (n.d.), <http://www.america.gov/st/peacesec-english/2008/October/20081029125549idybeekcm0.1096613.html>.

<sup>114</sup> *Id.*

<sup>115</sup> Corey Flintoff, *Can U.S. Help End Rape as a Weapon in Congo's War?*, NPR NEWS, <http://www.npr.org/templates/story/story.php?storyId=111782564>.

<sup>116</sup> Porter Goss, testimony before the Senate Select Committee on Intelligence, S. Hrg. 109-61 (Feb. 16, 2005).

<sup>117</sup> U.S. Agency for Int'l Dev., *Democracy and Governance in Democratic Republic of Congo*, available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/regions/afr/droc.html](http://www.usaid.gov/our_work/democracy_and_governance/regions/afr/droc.html) (last visited July 21, 2010).

<sup>118</sup> See Flintoff, *supra* note 115.

should have learned the hard way that there is only one way to do so—by leading through example, with the deployment of at least modest numbers of American troops, to spark a broader strengthening of the current U.N. mission.<sup>119</sup>

Similarly, former U.S. Assistant Secretary of State for Africa Jendayi Frazer, now a professor at Carnegie Mellon, has called on President Obama to “galvanize U.S. efforts to end the militia violence” in the country.<sup>120</sup> According to Frazer, “[t]he rebels are going to have to be confronted militarily and defeated by a well-trained Congolese force. The best thing [the United States] could do is train and professionalize that military.”<sup>121</sup> Frazer has further asserted that efforts to promote development, combat terrorism, and build stability in Congo will advance America’s “core interests.”<sup>122</sup>

In addition, the Obama Administration has been vocal in its commitment to promoting peace and stability in the region. In fact, before being elected President, then-Senator Obama sponsored a congressional act to promote stability in Congo. The act, titled, “The Democratic Republic of the Congo Relief, Security, and Democracy, Promotion Act of 2006,” asserts that U.S. policy toward Congo includes supporting “security sector reform by assisting the Government of the Democratic Republic of the Congo to establish a viable and professional national army and police force that respects human rights and the rule of law . . . .”<sup>123</sup> The act calls on the United States to use its position on the U.N. Security Council to “strengthen the authority and capacity of MONUC” by, among other things, “providing specific authority and obligation to prevent and effectively counter imminent threats,”<sup>124</sup> “clarifying and strengthening MONUC’s rules of engagement to enhance

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<sup>119</sup> Michael O’Hanlon, *U.S. Boots On Congo Ground; A New Kind of Force Could Provide Security*, WASH. POST, Aug. 14, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/13/AR2009081302900.html>.

<sup>120</sup> Jendayi E. Frazer, *Four Ways to Help Africa: The U.S. African Command Should Move from Germany to Liberia*, WALL ST. J., Aug. 25, 2009, [http://online.wsj.com/article/SB10001424052970203706604574372711948607526.html](http://online.wsj.com/http://online.wsj.com/article/SB10001424052970203706604574372711948607526.html).

<sup>121</sup> Flintoff, *supra* note 115. See also Frazer, *supra* note 120 (stating, “[u]ltimately, the problem in Eastern Congo is that you have FDLR insurgents who will never come forward to a negotiated peace process.”).

<sup>122</sup> Frazer, *supra* note 120.

<sup>123</sup> Pub. L. No. 109-456, 120 Stat. 3384, 3386 (2006).

<sup>124</sup> *Id.* at 3389.

the protection of vulnerable civilian populations,”<sup>125</sup> and, where consistent with U.S. policy, “making available personnel, communications, and military assets that improve the effectiveness of robust peacekeeping, mobility, and command and control capabilities of MONUC.”<sup>126</sup> Furthermore, speaking at a diplomacy briefing conference in Washington on 14 June 2010, Assistant Secretary of State for Africa Johnnie Carson asserted that the conflict in Congo “remains a top priority for [the Obama] Administration.”<sup>127</sup>

The above-mentioned calls for—and pledges of—support for peace in Congo and recognition of the need for the United States to exert pressure for reform of MONUC through its role on the U.N. Security Council, may point to a heightened role for the U.S. Army’s newly-created African Command (AFRICOM). The AFRICOM is already involved in a security assistance program in Congo—the United States recently established a program to train a “model unit” light infantry battalion of Congolese army forces in Kisangani, Congo.<sup>128</sup> This training will take six to eight months to complete, and it will be overseen by AFRICOM’s Special Operations Command component. The goal of the operation is to create an initial battalion of highly-trained Congolese soldiers that will provide a “platform from which additional training of Congolese troops can be done by very well trained Congolese troops.”<sup>129</sup>

Additionally, the AFRICOM is an ideal partner for U.N. rule of law efforts in Congo. The American military is already participating in a handful of judicial reform operations in the country, and further U.S. expertise and assistance in this area would be particularly beneficial to peace-building. Rule of law operations are an essential part of U.S. foreign policy: the 2006 National Security Strategy (NSS) of the United States references “rule of law” sixteen times,<sup>130</sup> and judge advocates have

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> U.S. Dep’t of State, U.S. Priorities for Sub-Saharan Africa, June 14, 2010, *available at* <http://www.state.gov/p/af/rls/rm/2010/143144.htm> (reprinting comments of Secretary Carson).

<sup>128</sup> Nicole Dalrymple, U.S. and DRC in Partnership to Train Model Congolese Battalion, Feb. 18, 2010, *available at* <http://www.africom.mil/getArticle.asp?Aart=4032> (last visited July 21, 2010).

<sup>129</sup> *Id.* (citing Ambassador William Garvelink, U.S. Ambassador to Congo).

<sup>130</sup> *See* OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2006), *available at* <http://www.whitehouse.gov/nsc/nss.html>.

been involved in overseas rule of law operations for over a century.<sup>131</sup> The Center for Law and Military Operations at the Judge Advocate General's Legal Center and School and the Joint Force Judge Advocate at U.S. Joint Forces Command recently produced a manual intended to help military lawyers conduct rule of law operations as part of counterinsurgency efforts,<sup>132</sup> and its practical advice for those engaged in rule of law initiatives is highly applicable to the Congolese context. The *Handbook* asserts that key post-conflict tasks include "setting up police and judicial training programs," assisting a new legislature in passing new laws, and "undertaking public relations campaigns to heighten awareness of the rule of law."<sup>133</sup> All of these efforts are sorely needed in Congo.

Finally, AFRICOM has already deployed a unit of civilian experts, medical personnel, and military engineers to Congo to investigate modalities for assisting survivors of sexual violence.<sup>134</sup> This team is part of a \$17 million U.S. aid package aimed at "preventing and responding to future acts of sexual violence" in Congo's east,<sup>135</sup> and the United States has been exploring ways to expand these efforts. Congo would benefit greatly from U.S. initiatives in judicial training, assisting with legislative reform, media programs aimed at providing basic legal education to the public, and investigative and prosecutorial support.

Although this article chiefly addresses necessary changes to MONUC's peacekeeping strategy, its recommendations are equally relevant to members of the U.S. combat arms and support branches, including judge advocates, and civilians assisting the stabilization process in Congo who operate outside the U.N. structure. In addition, of course, the United States' powerful role on the Security Council and as a financial supporter of peacekeeping missions make U.S. policymakers uniquely situated to press for the necessary changes to the U.N.'s peacekeeping efforts. Therefore, recommendations directed at MONUC in this article are equally relevant to U.S. actors.

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<sup>131</sup> THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH. & CTR. FOR LAW AND MILITARY OPERATIONS, *RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES*, at xi (2007) [hereinafter *RULE OF LAW HANDBOOK*].

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 15.

<sup>134</sup> See John Vandiver, *AFRICOM to Aid Congo Rape Victims*, STARS & STRIPES (European ed.), Aug. 16, 2009.

<sup>135</sup> *Id.* (citing U.S. Secretary of State Hilary Clinton).



#### F. The Conflict in Congo is an Unconventional War

The FDLR's actions in response to the Congolese army's *Kimia II* campaign—swift dispersal action to evade large-scale offensive attacks and strategic use of reprisal violence against civilians—are typical tactics of successful insurgent warfare.<sup>136</sup> By attacking civilians, the FDLR has been able to sow disorder and prompt anger at the government forces whose offensive action in some sense “caused” the attacks. Additionally, indiscriminate offensive operations by government forces are helpful to insurgent recruiting: Civilians angered by undisciplined government attacks may join militia groups in order to retaliate or protect themselves and their families from future abusive government action.<sup>137</sup>

Local civilians, themselves bearing the brunt of the extremely high levels of violence perpetrated by armed militia groups, therefore continue to support the FDLR and provide area militias with new recruits. This result is counterintuitive, but still is a classic example of the way in which insurgencies perpetuate.<sup>138</sup> Because unstable and violent conditions draw attention to a host nation's inability to protect its citizens, civilians living in these conditions often seek to acquire patronage relationships with the very militia groups that are terrorizing

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<sup>136</sup> For a good overview of the classical attributes of an insurgency, see THE U.S. ARMY/MARINE CORPS COUNTERINSURGENCY FIELD MANUAL, at xlviii (Univ. Chicago Press 2007) (reprinting U.S. DEP'T OF ARMY, FIELD MANUAL 3-34, COUNTERINSURGENCY (15 Dec. 2006)) [hereinafter COUNTERINSURGENCY FIELD MANUAL]. See also DAVID GALULA, COUNTERINSURGENCY WARFARE: THEORY AND PRACTICE 50 (Praeger Security Int'l 2006) (1964) (“The strategy of conventional warfare prescribes the conquest of the enemy's territory, the destruction of his forces. The trouble here is that the enemy holds no territory and refuses to fight for it.”); *id.* at 84 (“By threatening the population, the insurgent gives the population an excuse, if not a reason, to refuse or refrain from cooperating with the counterinsurgent.”).

<sup>137</sup> See John A. Lynn, *Patterns of Insurgency and Counterinsurgency*, MIL. REV., Aug. 2005, at 22, 27 (asserting that indiscriminate violence by counterinsurgents “generates the three ‘Rs’: resentment, resistance, and revenge” among the local population); COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 41 (noting that overly aggressive force by counterinsurgents can motivate new insurgent recruits); Sarah Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xxv (“The fact or perception of civilian deaths at the hands of their nominal protectors can change popular attitudes from neutrality to anger and active opposition. Civilian deaths create an extended family of enemies—new insurgent recruits or informants . . .”).

<sup>138</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 16.

the region, hoping to gain protection from them or escape their violence.<sup>139</sup>

However, while the FDLR has successfully implemented an insurgent strategy typical of “unconventional warfare,” the Congolese army and MONUC’s response has been both highly conventional and highly unsuccessful. The MONUC and the Congolese army have attempted to utilize indiscriminate offensive force in order to prompt FDLR surrender and disarmament. As mentioned above, however, the use of offensive force in the absence of strong population security measures can actually *increase* insurgent power and is extremely unlikely to bring about long-term, effective stabilization. Instead, insurgents can easily retreat from large-scale attacks and avoid direct confrontations with offensive forces, returning later to reoccupy their former positions and brutalize civilians.

### III. Peacekeeping and Counterinsurgency

This article offers a proposed solution to the problems plaguing U.N. peacekeeping in Congo: the incorporation of counterinsurgency doctrine into peacekeeping strategies. Counterinsurgency (COIN) doctrine is a set of guidelines for military action designed for use in unconventional wars.<sup>140</sup> The doctrine aims to enhance strategic understanding of how insurgencies develop, operate, and flourish, and how they can be successfully defeated.<sup>141</sup> Although the theories that form the basis of COIN doctrine have been explored by a handful of military strategists for decades, the impact of these principles on mainstream U.S. military thinking is relatively recent. The U.S. Army and Marine Corps

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<sup>139</sup> See *id.* at 16, 112–13. In the absence of adequate government security following Operation Iraqi Freedom, various ethnic and political militias arose and were empowered by the population’s desire for protection. *Id.*

<sup>140</sup> These guidelines involve “principles, tactics, techniques, and procedures applicable worldwide.” COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xlviii.

<sup>141</sup> See JOINT CHIEFS OF STAFF, JOINT PUB. I-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 111 (12 Apr. 2001 as amended through Apr. 2010) (defining counterinsurgency as “[c]omprehensive civilian and military efforts taken to *defeat* an insurgency and to address any core grievances”) (emphasis added); GALULA, *supra* note 136, at 54 (asserting that victory in counterinsurgency includes the destruction of insurgent forces and political organization, as well as the willful rejection and isolation of the insurgency by the local population). See also COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xli-xlii (noting the importance of “[k]nowledge of the history and principles of insurgency” to successful counterinsurgency.).

developed modern COIN doctrine in response to America's military failures in the early stages of the war in Iraq, and the doctrine represents a paradigm shift.<sup>142</sup> The COIN doctrine contrasts sharply with conventional concepts of warfare, and it is radically changing the way that the United States fights modern wars.<sup>143</sup> Today, counterinsurgency's lessons, widely credited with having changed the fate of the U.S. war in Iraq, are being exported for use in Afghanistan.<sup>144</sup>

Until very recently, the majority of the U.S. military was virtually unacquainted with the theory and practice of counterinsurgency.<sup>145</sup> Instead, the army operated under traditional doctrines of warfare that had proven effective over hundreds of years, using conventional approaches that had been developed to fight classical battles between regular armies of recognized sovereigns. Under a classical theory of warfare, a number of straightforward factors determine which side will prevail:

- (1) The strongest camp usually wins;
- (2) If two camps are the same size, the more resolute wins;

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<sup>142</sup> See, e.g., John A. Nagl, *Foreword to the University of Chicago Press Edition*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 140, at xiii, xvii ("Perhaps no doctrinal manual in the history of the Army has been so eagerly anticipated and so well received . . ."); Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xxiv ("This field manual is radical in a contemporary American military context . . .").

<sup>143</sup> See Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 140, at xxiv ("This field manual is radical in a contemporary American military context . . .").

<sup>144</sup> See, e.g., John Antal, *A Tale of Four Strategies: The War in Afghanistan*, 34 MIL. TECH. 4, 4–5 (2010).

<sup>145</sup> Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xiii–xv ("When the Iraqi insurgency emerged the Army . . . did not even have a common understanding of the problems inherent in any counterinsurgency campaign, as it had not studied such battles, digested their lessons, and debated ways to achieve success in counterinsurgency campaigns. It is not unfair to say that in 2003 most Army officers knew more about the U.S. Civil War than they did about counterinsurgency."). See also Colonel George K. Osborn III, U.S. Army, *Foreword* to ANDREW F. KREPINEVICH, *THE ARMY AND VIETNAM*, at xi (1986):

For the U.S. Army, the doctrine of the past thirty-five years or so emerged from the experience of World War II, or more accurately, from a set of assumptions based on that experience and was codified in field manuals, service-school curricula, training programs, and the like, largely in the first five years following the war. The future war that the army was prepared to fight was, above all, one rather like World War II

. . . .

- (3) If resolution is equally strong, victory belongs to the group that seizes and keeps the initiative; and  
 (4) Surprise may play a decisive role.<sup>146</sup>

Under this theory, military strength is viewed as largely decisive.<sup>147</sup> Conventional strategies, therefore, focus largely on the use of superior firepower and heavy infantry units to prompt the annihilation or attrition of enemy forces.<sup>148</sup> They emphasize offensive action, high volumes of firepower,<sup>149</sup> high levels of spending on powerful munitions and technology,<sup>150</sup> and “search and destroy” missions against the adversary.<sup>151</sup> In so-called “conventional warfare,” success is measured in battles won and enemy body count achieved.<sup>152</sup> All else being equal, the effectiveness of an army is considered directly proportional to its power<sup>153</sup>—troop numbers, combat training, sophisticated weaponry and

<sup>146</sup> GALULA, *supra* note 136, at xii.

<sup>147</sup> See also 1 CARL VON CLAUSEWITZ, *ON WAR* 154 (J. J. Graham trans., Kegan Paul, Trench, Trübner & Co. 1909) (1832) (“Every combat is therefore the bloody and destructive measuring of the strength of forces, physical and moral; whoever at the close has the greatest amount of both left is the conqueror.”).

<sup>148</sup> See, e.g., KREPINEVICH, *supra* note 145, at 16, 164–65 (noting that in Vietnam, “the Army applied the doctrine and force structure it had developed for conventional contingencies in Europe and Korea . . . . In a sense, simple attrition of insurgent forces was a natural strategy for MACV to pursue. It emphasized the Army’s strong suits in firepower . . . .”); *id.* at 16 (noting that U.S. Army officials in Vietnam “placed their emphasis on massive firepower and attrition of North Korean and Chinese forces”). *Id.*; 1 CLAUSEWITZ, *supra* note 147, at 32 (“[F]or if war is an act of violence to compel the enemy to fulfill our will, then in every case all depends on our overthrowing the enemy, that is, disarming him, and on that alone.”).

<sup>149</sup> See KREPINEVICH, *supra* note 145, at 5 (“The characteristics of the Army Concept [the U.S. Army’s traditional approach to war] are two: a focus on mid-intensity, or conventional, war and a reliance on high volumes of firepower to minimize casualties—in effect, the substitution of material costs at every available opportunity to avoid payment in blood.”).

<sup>150</sup> See *id.* at 164 (“Attrition is a product of the American way of war: spend lavishly on munitions, materiel, and technology to save lives.”).

<sup>151</sup> See *id.* at 180.

<sup>152</sup> See, e.g., Osborn, *supra* note 145, at xii (noting that in Vietnam, where conventional strategy was used in an insurgent war, “victory in individual battles replaced the accomplishment of a campaign plan based on strategy to attain the objectives of war”); KREPINEVICH, *supra* note 145, at 197 (noting that in Vietnam, “the number of enemy killed in action (KIA) served as the measure of how well the strategy was working,” and “[m]ass application of firepower, as in Korea and World War II, was felt to be the most efficient method of generating an enemy body count”). See also 1 CLAUSEWITZ, *supra* note 147, at 39 (“We have only one means in war—the battle.”).

<sup>153</sup> See 1 CLAUSEWITZ, *supra* note 147, at 18–20 (“Now, philanthropists may easily imagine there is a skillful method of disarming and overcoming an enemy without great bloodshed, and that this is the proper tendency of the Art of War. However plausible this

discipline are the keys to victory, and in all of those areas, the U.S. military is arguably the strongest in the world.<sup>154</sup>

Nonetheless, over the past forty years, the U.S. military has suffered a series of unprecedented failures, beginning with the war in Vietnam and culminating with a struggle to maintain order in Iraq and Afghanistan.<sup>155</sup> Although conventional doctrine was questioned from within the U.S. military during the Vietnam War—Marine Combined Action Platoons (CAPs), for instance, experimented with a “small wars” approach that focused on population security and utilized many principles of counterinsurgency<sup>156</sup>—efforts that fell outside the traditional “Army Concept” of large-unit, heavy artillery operations were derided by the military mainstream and were largely marginalized.<sup>157</sup> The U.S. Army’s deep faith in conventional theories of warfare, and the ingrained belief that success could be measured in battle victory rather than long-term strategic goals, is illustrated by Colonel Harry Summers’s famous comment to his Vietnamese counterpart in April 1975, “You know you never defeated us on the battlefield.”<sup>158</sup> The Vietnamese colonel paused for a moment before replying, “That may be so. It is also irrelevant.”<sup>159</sup>

After decades of using conventional doctrines in unconventional conflicts, U.S. military commanders and civilian leaders began to

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may appear, still it is an error which must be extirpated . . . . [H]e who uses force unsparingly, without reference to the bloodshed involved, must obtain a superiority if his adversary uses less vigor in its application.”).

<sup>154</sup> See Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xiii (“The American Army of 2003 was organized, designed, trained, and equipped to defeat another conventional army; indeed, it had no peer in that arena.”).

<sup>155</sup> See *id.* at xiv–xv.

<sup>156</sup> KREPINEVICH, *supra* note 145, at 172–77. The Marines also instituted a successful population security program known as Golden Fleece that allowed Vietnamese farmers to harvest and sell their crops free of Viet Cong taxation. *Id.* at 174. However, a very small percentage of American forces in Vietnam utilized these approaches. *Id.*

<sup>157</sup> See *id.* at 174–76, 232 (noting that the “Army’s reaction to the CAP program was ill-disguised disappointment, if not outright disapproval, from the top down” and that “[t]o the extent that Regular Army units participated in counterinsurgency operations, they either looked for quick, cheap solutions that did not exist . . . or misused the forces that had been designed to provide some effectiveness in combating insurgents”).

<sup>158</sup> See HARRY G. SUMMERS, JR., ON STRATEGY: A CRITICAL ANALYSIS OF THE VIETNAM WAR 1 (1982) (further noting that “[o]ne of the most frustrating aspects of the Vietnam war from the Army’s point of view is that as far as logistics and tactics were concerned we succeeded in everything we set out to do”).

<sup>159</sup> *Id.*

recognize that large-scale conventional warfare was not working in the low-intensity, protracted conflicts that make up much of modern war.<sup>160</sup> In 2002, *Operation Enduring Freedom* in Iraq was arguably on the brink of collapse. Facing mounting casualties and political chaos as civilian violence gripped the Iraqi countryside, the U.S. Department of Defense was forced to reexamine its traditional strategies. A radically different approach was needed, and previously ignored or marginalized theories of counterinsurgency were reexamined, revitalized, and incorporated into mainstream U.S. military thinking. In this way, modern counterinsurgency doctrine was born.<sup>161</sup>

Today's counterinsurgency doctrine was formulated through an intense process of inter-disciplinary dialogue among academics, policymakers, and the military.<sup>162</sup> In 2005, General David Petraeus, who holds a doctorate from the Woodrow Wilson School of Public and International Affairs at Princeton University and had directed the Multi-National Security Transition Command Iraq (MNSTC-I), returned to the United States and assumed responsibility for doctrinal development within the U.S. Army.<sup>163</sup> Petraeus's experience in Iraq had convinced him of the importance of counterinsurgency training, and he made counterinsurgency education—including a revised manual on counterinsurgency doctrine—a top priority in his new post.<sup>164</sup> General Petraeus and Lieutenant General James Mattis, Petraeus's Marine Corps counterpart in the development of the new manual, solicited expertise and criticism from a wide range of colleagues, academics, journalists, human rights advocates, and veterans of the wars in Iraq and

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<sup>160</sup> In 2006 General Jack Keane, former Vice Chief of Staff of the Army, told Jim Lehrer that the U.S. Army “doesn’t have any doctrine, nor was it educated and trained, to deal with an insurgency . . . . After the Vietnam War, we purged ourselves of everything that had to do with irregular warfare or insurgency, because it had to do with how we lost that war. In hindsight, that was a bad decision.” *Jim Lehrer News Hour* (PBS television broadcast Apr. 18 2006), *quoted in* Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xiv.

<sup>161</sup> See Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xv.

<sup>162</sup> The current doctrine draws deeply from “classics” of insurgency and counterinsurgency, written by earlier theorists such as David Galula, Robert Thompson, Mao Zedong, and T.E. Lawrence. Many of these “classics” are listed in the Field Manual’s bibliography. See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 391–92.

<sup>163</sup> *Id.* at xv–xvi.

<sup>164</sup> *Id.*

Afghanistan.<sup>165</sup> These groundbreaking efforts catalyzed the writing and publication of the now-canonical *Counterinsurgency Field Manual*.<sup>166</sup>

The manual was published in 2006 and released to civilian readers as well as Marines and Soldiers in the field as *U.S. Army Field Manual No. 3-24* and *Marine Corps Warfighting Publication No. 3-33.5*. The book's uncommonly wide public release proved a major success: The doctrine was greeted with enthusiasm by commanders in the field, to whom the book's reflections about the nature of insurgency rang true. The manual was received with equal excitement by civilians, who were eager for refreshing analysis on what had become the nation's most intractable policy problem.<sup>167</sup> The book sold millions of copies in the United States, and a doctrinal revolution began sweeping through the U.S. military.<sup>168</sup>

The revolutionary premise of COIN doctrine is that offensive force can actually *hinder* success in insurgent conflicts, especially when force is applied indiscriminately.<sup>169</sup> The theory is that excessive force provides fodder for insurgent rhetoric, decreasing popular support and hindering counterinsurgents' ability to collect intelligence by disrupting information networks based on local goodwill.<sup>170</sup> Perhaps counter-intuitively, indiscriminate force applied by counterinsurgents can also cause insurgent power to increase, as civilians angered by the destructive

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<sup>165</sup> *Id.*

<sup>166</sup> COUNTERINSURGENCY FIELD MANUAL, *supra* note 136.

<sup>167</sup> *See id.* at xvii–xviii (Nagl states that “[t]he finished book was released on December 15, 2006 to extraordinary media outcry; Conrad Crane was featured in *Newsweek* as a ‘Man to Watch’ for his contribution to the intellectual development of the Army and Marine Corps,” and that “[p]erhaps no doctrinal manual in the history of the Army has been so eagerly anticipated and so well received . . .”).

<sup>168</sup> In addition to its incredible hard copy sales, the book was downloaded over two million times in the first two months after its posting to Army and Marine Corps websites. Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xxi.

<sup>169</sup> In reference to this concept, Lieutenant General James Mattis, who had commanded the 1st Marine Division during the initial Iraq invasion and later became General Petraeus's Marine Corps counterpart in developing modern counterinsurgency doctrine, made his division's motto “No better friend, no worse enemy—First Do No Harm.” Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL *supra* note 136, at xvi.

<sup>170</sup> *See* Richard C. Paddock, *Shots to the Heart of Iraq*, L.A. TIMES, July 25, 2005, <http://articles.latimes.com/2005/jul/25/world/fg-civilians25> (“Of course [recent civilian deaths attributed to U.S. troops] will increase support for the opposition,” said Farraji, 49, who was named a police general with U.S. approval. “The hatred of the Americans has increased. I myself hate them.”).

actions of counterinsurgents become new recruits for expanding insurgent networks.<sup>171</sup>

In addition, in an insurgent war, whole-scale surrender is not a likely response to the use of force, since the “enemy” often does not wear uniforms or fall under the control of a single sovereign state or central control. Insurgent forces often *flourish* as regional body counts rise, regardless of the affiliation of those killed. This is because instability *decreases* the legitimacy of domestic security forces and counterinsurgent forces, making the local population more likely to align with an insurgency in an attempt to escape violence. Protection of civilians, however, has the opposite effect: When civilians feel secure and protected, they are far less likely to align with an insurgency and far more likely to provide information to counterinsurgent forces.<sup>172</sup> As David Galula, one of the forefathers of modern counterinsurgency doctrine, has observed,

The destruction of the insurgent forces requires that they be localized and immediately encircled. But they are too small to be spotted easily by the counterinsurgent’s direct means of observation. Intelligence is the principle source of information on guerrillas, and intelligence has to come from the population, but the population will not talk unless it feels safe, and it does not feel safe until the insurgent’s power has been broken.<sup>173</sup>

Therefore, the goal of counterinsurgent troops is to

protect and hence gain support of the populace, acquire information on the identity and location of insurgents, and thereby defeat the insurgency. While the primary challenge of conventional warfare is massing firepower at the appropriate place and time to destroy the enemy, the key to success in counterinsurgency is massing

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<sup>171</sup> COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 16.

<sup>172</sup> See GALULA, *supra* note 136, at 83 (“The counterinsurgent cannot achieve much if the population is not, and does not feel, protected against the insurgent.”). See also Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at vii, viii (describing insurgency as “a competition between insurgent and government for the support of the civilian population, which provides the sea in which the insurgent swims”).

<sup>173</sup> GALULA, *supra* note 136, at 50.



intelligence derived from the local population to identify the enemy.<sup>174</sup>

Counterinsurgency thus focuses on protecting civilians and promoting peace and security, and, to this end, it incorporates international human rights standards and principles of accountability and transparency.<sup>175</sup> In fact, as discussed below, counterinsurgency has goals very similar to those of U.N. peacekeeping.

Counterinsurgency's impact on U.S. military strategy has been nothing short of revolutionary. Sarah Sewall, director of the Carr Center for Human Rights Policy at the Kennedy School of Government, wrote, at the time of the manual's civilian release, that the new doctrine

challenges much of what is holy about the American way of war. It demands significant change and sacrifice to fight today's enemies honorably. It is therefore both important and controversial. Those who fail to see the manual as radical probably don't understand it, or at least understand what it's up against.<sup>176</sup>

As a result of this "radical" change in doctrine, American strategy in Iraq sharply changed course. This change resulted in measurable security gains and a decrease in violence directed against civilians.<sup>177</sup> Arguably, it also prevented the whole-scale collapse of Iraq's civilian government.

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<sup>174</sup> Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at vii.

<sup>175</sup> See Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 140, at xxiv ("The new manual is cognizant of international rights standards, expectations of accountability, and the transparency that accompanies the modern world."). See also COUNTERINSURGENCY FIELD MANUAL, *supra*, at 37–39 ("The primary objective of any COIN operation is to foster development of effective governance by a legitimate government. . . . In Western liberal tradition, a government that derives its just powers from the people and responds to their desires while looking out for their welfare is accepted as legitimate.").

<sup>176</sup> See Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xxi.

<sup>177</sup> See, e.g., Jonathan Schroden, *Measures for Security in a Counterinsurgency*, 32 J. STRATEGIC STUD. 715 (2009); LIEUTENANT COLONEL JIM CRIDER, INSIDE THE SURGE: ONE COMMANDER'S LESSONS IN COUNTERINSURGENCY 13–14 (2009), [http://www.cnas.org/files/documents/publications/CNAS\\_Working%20Paper\\_Surge\\_CriderRicks\\_June2009\\_ONLINE.pdf](http://www.cnas.org/files/documents/publications/CNAS_Working%20Paper_Surge_CriderRicks_June2009_ONLINE.pdf) ("In just a matter of months, the tables had turned. Before, we had no idea who was watching us or plotting attacks; now insurgents had no idea who was giving them up."); Lieutenant Colonel James Vizzard & Timothy Capron, *Exporting General Petraeus's Counterinsurgency Doctrine*, 70 PUB. ADMIN. REV. 485, 491 (2010).

The sweeping changes ushered in by COIN doctrine brought the U.S. military into the twenty-first century. COIN doctrine is designed to provide the military with the tools it needs to successfully counter the unconventional violence that makes up much of post-Cold War warfare. The U.N.—and, ostensibly, the newly-created AFRICOM—now faces similar violence in the Democratic Republic of Congo. If peacekeeping is to succeed at quelling this complex and multi-faceted post-Cold War violence, the prevailing strategy must be brought into the twenty-first century as well.

#### A. A New Kind of War

The irregular, protracted conflicts that led to the development of modern COIN doctrine contrast sharply with the classical, interstate conflicts that for centuries formed the context of conventional warfare.<sup>178</sup> Much of modern warfare involves “complex communal conflicts where armed militias and organized crime play a key role.”<sup>179</sup> Dr. Steven Metz, Chairman of the Regional Strategy and Planning Department at the Strategic Studies Institute of the U.S. Army War College, has described twenty-first century insurgencies as follows:

[T]hey are nested in complex, multidimensional clashes having social, cultural, and economic components. In an even broader sense, contemporary insurgencies flow from systemic failures in the political, economic, and social realms. . . . Such complex conflicts involve a wide range of participants, all struggling to fill the voids created by failed or weak states and systemic collapse.<sup>180</sup>

As such, insurgencies generally occur in *intrastate* conflicts or in conflicts where “indigenous elements seek to overthrow what they perceive to be a foreign or occupation government.”<sup>181</sup>

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<sup>178</sup> They also contrast with the more recent post-colonial or nationalistic transition wars that shaped the U.S. Army’s initial understanding of counterinsurgency. See Steven Metz, *New Challenges and Old Concepts: Understanding 21st Century Insurgency*, PARAMETERS, Winter 2007–2008, at 20, 21–22.

<sup>179</sup> *Id.* at 22.

<sup>180</sup> *Id.*

<sup>181</sup> COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 3.

Many such insurgencies emerged at the end of the Cold War, when weak governments that were no longer receiving support from their previous superpower allies became embroiled in conflict with hostile internal elements.<sup>182</sup> After host governments lost superpower support, internal “insurgent” or “rebel” groups were initially at a resource disadvantage, even with respect to the weak governments they challenged, and did not pose a strong threat to the centralized state.<sup>183</sup> However, insurgent groups were slowly able to overcome this material disparity by fostering civilian violence and instability, thereby forcing their government targets to expend critical resources protecting the civilian population and maintaining stability. Insurgents were thus able to consume the energies of host governments, slowly weakening their hegemony and legitimacy until endangered civilian populations stopped recognizing the government’s authority and legitimacy.<sup>184</sup>

Because of this dynamic, the promotion of civilian insecurity and endemic violence are common tools of insurgents: Failing to keep civilians safe decreases the legitimacy of the national government in the eyes of the populace. By contrast, a national government must establish its own legitimate claim to leadership before it can effectively stamp out an internal insurgency and prevent new insurgencies from forming.<sup>185</sup> This is because legitimate governments rule primarily with the consent of the populace, and as such, they enjoy a degree of support and obedience necessary to maintain stability and develop capabilities to regulate social relationships, take public action, and maintain collective security.<sup>186</sup> If civilians realize that they cannot depend on government forces for protection, however, they are far less likely to accept the government’s legitimate claim to leadership, and they are far more likely to join or aid the rebel groups that have been terrorizing them, in an attempt to protect themselves and their families.<sup>187</sup>

Because of the importance of national stability and host-government legitimacy to a successful counterinsurgency effort, foreign counterinsurgent forces often face the difficult task of helping a host government to reestablish order and stability where none currently

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<sup>182</sup> *Id.* at 7.

<sup>183</sup> *Id.* at 11–13.

<sup>184</sup> *Id.* at 16.

<sup>185</sup> *See, e.g., id.* at 39 (noting that counterinsurgency efforts “cannot achieve lasting success without the [host nation] government achieving legitimacy”).

<sup>186</sup> *Id.* at 37.

<sup>187</sup> *Id.* at 37–38.

exists.<sup>188</sup> This puts conventional military troops in an unfamiliar position. The establishment of order is contrary to the goals of most traditional military operations, which historically aimed to sow *disorder* through widespread bombings, blockades, or other intentional infliction of violence. Indeed, traditional military strategy is based on the fact that violence, drought, hunger, and other forms of disorder, when directed against organized troops, can disrupt military organization and prompt retreat or surrender. Counterinsurgency, however, requires the *establishment* of order, which is accomplished through *prevention* of violence, hunger, and confusion. This requires a wide range of skills that most conventional militaries do not possess. Order-*establishing* skills, such as troop and police training, civics, sanitation, economics, and political facilitation, are classically the purview of civil technocrats, not military personnel.<sup>189</sup> Counterinsurgent forces, however, must learn these skills. They also face the distinctly *unmilitary* task of building sustained relationships with local civilian leaders, since such relationships will ensure that the troops receive vital information and that local civilians do not defect and become new recruits to the insurgency. Because counterinsurgent troops must possess a skill set that is atypical for classical military personnel, success in counterinsurgency is dependent on radical changes in the way that troops are trained.<sup>190</sup>

Successful counterinsurgency requires that troops be taught communication, civics, civil engineering, and police skills. It also requires that troops be taught to adapt quickly to their areas of operations (AOs) and respond creatively when situations on the ground shift. Such creative thinking is vital to success because insurgents relationships and tactics are constantly changing; insurgents and counterinsurgents are essentially engaged in a battle over who can adapt faster to gain the advantages necessary for long-term success.<sup>191</sup>

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<sup>188</sup> *Id.* at 8.

<sup>189</sup> *See id.* at liv.

<sup>190</sup> *See* General David H. Petraeus & Lieutenant General James F Amos, *Foreword* to COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xlv–xlvi.

<sup>191</sup> For a detailed discussion of adaptive behavior in insurgencies and counterinsurgencies, see LIEUTENANT COLONEL DAVID J. KILCULLEN, COUNTERING GLOBAL INSURGENCY (2004), *available at* <http://www.smallwarsjournal.com/documents/kilcullen.pdf>:

[I]nsurgencies are . . . complex adaptive systems. They are relatively invulnerable to operational shock, so most conventional maneuvers (which use operational shock as a defeat mechanism) are ineffective. They are more vulnerable to surprise, but this demands continuous

Conventional troops, on the other hand, are far less likely to need creative reaction and adaptation skills, since conventional military operations are far more dependent on advance, centralized planning than is counterinsurgency. The skill set needed by troops engaged in effective counterinsurgency operations, therefore, differs radically from that needed by troops engaged in conventional military operations.<sup>192</sup>

In his foreword to the most recent edition of the Counterinsurgency Field Manual, John Nagl (a member of the *Counterinsurgency Field Manual*'s writing team, retired Lieutenant Colonel in the U.S. Army, and veteran of the Iraq war) lists some of the requirements of successful counterinsurgency campaigns as population security, economic development, good governance, and the provision of civil services, all in an attempt to "build stable and secure societies that can secure their own borders and do not provide safe haven for terrorists."<sup>193</sup> Because of counterinsurgency's uniquely unmilitary goals, traditional military skills such as marksmanship, security and defense capability, and mental and physical fitness to engage in a combat zone are not sufficient for counterinsurgents. Successful counterinsurgent troops must also possess skills in nation building, civics, and creative analysis.

#### B. The Applicability of the Doctrine to Peacekeeping

Just as modern counterinsurgency warfare has drastically altered the skills needed by military operators, changes in modern peacekeeping have drastically altered the skills needed by current peacekeepers. Classical U.N. peacekeeping involved peaceable "observation" of

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innovation: there will never be a single optimal solution. Indeed, the more effective a measure is, the faster it will be obsolete, because it will force the enemy to adapt more quickly.

A shorter version of this paper was published in the *Journal of Strategic Studies* in 2005. 28 J. STRATEGIC STUD. 597 (2005). See also COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at liii, 196.

<sup>192</sup> See, e.g., *id.* secs. 1–3; Petraeus & Amos, *Foreword to COUNTERINSURGENCY FIELD MANUAL*, *supra* note 136, at xlv (noting that counterinsurgency "requires Soldiers and Marines to employ a mix of familiar combat tasks and skills more often associated with nonmilitary agencies"); Nagl, *Foreword, in COUNTERINSURGENCY FIELD MANUAL*, *supra* note 136, at ix ("Conventional armies are not well suited to the demands of counterinsurgency. The firepower on which they pride themselves cannot be leveraged against the insurgent; in fact, an almost entirely different orientation is necessary . . .").

<sup>193</sup> Nagl, *Foreword, in COUNTERINSURGENCY FIELD MANUAL*, *supra* note 136, at xix.

ceasefires in conventional wars *between recognized states*. Post-Cold War peacekeeping, on the contrary, is a quasi-military venture that aims predominantly to quell violence *within a weak state*.<sup>194</sup> The U.N. Department of Peacekeeping Operations (DPKO) described the changed context of modern peacekeeping in its 2008 *United Nations Peacekeeping Operations: Principles and Guidelines* (commonly known as the “Capstone Doctrine”), which contains principles and guidelines for field operations, notes that following the end of the Cold War “the strategic context for United Nations peacekeeping changed dramatically.”<sup>195</sup> The majority of modern wars are internal armed conflicts, and as a result, the U.N. has entered a new era of “multi-dimensional” peacekeeping operations:

Multi-dimensional United Nations peacekeeping operations deployed in the aftermath of an internal conflict face a particularly challenging environment. The State’s capacity to provide security to its population and maintain public order is often weak, and violence may still be ongoing in various parts of the country. Basic infrastructure is likely to have been destroyed and large sections of the population may have been displaced. Society may be divided along ethnic, religious and regional lines and grave human rights abuses may have been committed during the conflict, further complicating efforts to achieve national reconciliation.<sup>196</sup>

In stark contrast to its previous role monitoring consensual ceasefires and preventing resurgence of conventional interstate wars, the U.N. increasingly functions as a “midwife of political transitions.”<sup>197</sup> In fact, peacekeeping has become the most commonly used mechanism for attempting to halt civil war.<sup>198</sup>

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<sup>194</sup> See Donald C.F. Daniel & Bradd C. Hayes, *Securing Observance of UN Mandates Through Employment of Military Force*, in *THE UN, PEACE, AND FORCE* 105, 106–07 (Michael Pugh ed., 1997).

<sup>195</sup> U.N. DEPT. OF PEACEKEEPING OPERATIONS, DEP’T OF FIELD SUPPORT, *UNITED NATIONS PEACEKEEPING OPERATIONS: PRINCIPLES AND GUIDELINES* 21 (2008), [http://www.peacekeepingbestpractices.unlb.org/Pbpps/Library/Capstone\\_Doctrine\\_ENG.pdf](http://www.peacekeepingbestpractices.unlb.org/Pbpps/Library/Capstone_Doctrine_ENG.pdf) [hereinafter *CAPSTONE DOCTRINE*].

<sup>196</sup> *Id.* at 21–22.

<sup>197</sup> William J. Durch, *Introduction* to *THE EVOLUTION OF UN PEACEKEEPING* 1, 10 (William J. Durch ed., 1993).

<sup>198</sup> LISA MORJÉ HOWARD, *UN PEACEKEEPING IN CIVIL WARS* 1 (2008).

In this increasingly common intra-national peacekeeping context, U.N. peacekeepers function in a manner very similar to that of counterinsurgent troops: They must maintain law and order; carry out humanitarian functions; protect human rights; and provide basic civilian security where the host government cannot—tasks almost identical to those of counterinsurgents.<sup>199</sup> Indeed, peacekeepers, like counterinsurgents, attempt to strengthen host nation security forces while creating a secure and stable environment. They also work to promote political reconciliation; support the establishment of functioning, legitimate governmental institutions; and provide a framework for ensuring that international actors work together in a coordinated manner.<sup>200</sup> The operating context of modern peacekeeping is, therefore, one of protecting civilian populations and establishing order where none exists—a context identical to that of counterinsurgency.<sup>201</sup>

Additionally, success in multi-dimensional peacekeeping, like success in COIN, depends on the ability to adapt and learn from the local population.<sup>202</sup> Shashi Tharoor, U.N. Under Secretary General for Communications and Public Information under Kofi Annan, noted that in the 1990s, the U.N. was experimenting with peacekeeping, trying “all sorts of new things, everything from delivering humanitarian aid under fire, hunting down warlords, and of course monitoring no-fly zones.”<sup>203</sup> He described the experience as being “very much like fixing the engine

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<sup>199</sup> See, e.g., *id.* at 342:

While UN multidimensional peacekeeping as a solution to civil wars is transferred from one context to the next, similar processes have been occurring in the two major US-led operations, in Afghanistan and Iraq . . . While the operations in Iraq and Afghanistan are not officially termed “multidimensional peacekeeping,” the activities of the United States and its allies . . . mirror quite closely the tasks of multidimensional peacekeeping . . . ;

William J. Durch, *Epilogue: Peacekeeping in Uncharted Territory*, in *THE EVOLUTION OF UN PEACEKEEPING* 463, 474 (William J. Durch ed., 1993) (“Protecting individual human rights while sustaining or rebuilding war-torn countries may be peacekeeping’s new calling . . .”).

<sup>200</sup> CAPSTONE DOCTRINE, *supra* note 195, at 26.

<sup>201</sup> See Kofi Annan, Remarks by the Secretary-General to the Security Council, May 17, 2004, U.N. Doc SG/SM/9311 (2004).

<sup>202</sup> See HOWARD, *supra* note 198, at 2 (noting that “UN Peacekeeping seems to be more successful when the peacekeepers are actively learning from the environment in which they are deployed.”).

<sup>203</sup> LINDA FASULO, *AN INSIDER’S GUIDE TO THE UN* 59 (2005).

of a moving car.”<sup>204</sup> His analogy would be equally apt to describe COIN efforts, which have been described as “learning to eat soup with a knife.”<sup>205</sup>

Adaptations, however, must take place within a framework of general principles that can guide peacekeepers in their understanding of how rebel groups function and develop and how they can be successfully neutralized. A highly relevant set of principles has already been developed by the U.S. military, in conjunction with non-governmental organizations (NGOs), human rights experts, and scholars; these principles form the basis of COIN doctrine. The U.N., however, has not adopted COIN doctrine for use in peacekeeping operations. Instead, blue-helmet commanders in the field must currently attempt to adapt to changing local violence without any clear centralized doctrine for how such violence might be permanently quelled.

The striking similarities between post-Cold War warfare and post-Cold War peacekeeping have, however, been recognized by several scholars. William J. Durch, who served as the Project Director for the U.N. Panel on U.N. Peace Operations (the Brahimi Report), has warned that “despite every effort politically to avoid placing its forces in harm’s way, a U.N. force deployed into a situation of recent civil war may find it necessary to undertake, at least locally and on a small scale, operations not unlike those required in counterinsurgency.”<sup>206</sup> Similarly, Lise Morjé Howard notes in her recent book *UN Peacekeeping in Civil Wars* that although the U.S.-led “operations in Iraq and Afghanistan are not officially termed ‘multidimensional peacekeeping,’ the activities of the United States and its allies, in conjunction with, at times, the U.N. and other international organizations, mirror quite closely the tasks of multidimensional peacekeeping . . . .”<sup>207</sup> Even the introduction to the University of Chicago Press version of the *Counterinsurgency Field Manual* notes the striking similarities of COIN and peacekeeping:

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<sup>204</sup> *Id.*

<sup>205</sup> LIEUTENANT COLONEL JOHN NAGL, *LEARNING TO EAT SOUP WITH A KNIFE: COUNTERINSURGENCY LESSONS FROM MALAYA AND VIETNAM* (2005); *see also* T.E. LAWRENCE, *SEVEN PILLARS OF WISDOM* 182 (1926) (“[W]ar upon rebellion was messy and slow, like eating soup with a knife.”).

<sup>206</sup> William J. Durch, *Getting Involved: The Political Military Context, in THE EVOLUTION OF UN PEACEKEEPING* 16, 34 (William J. Durch ed., 1993).

<sup>207</sup> HOWARD, *supra* note 198, at 342.



Modern COIN . . . incorporates stability operations, also known as peace support operations, reconstruction, and nation building. Just recently, these were considered a separate category of military activity closely associated with multinational or United Nations peacekeeping operations in which force is rarely used.<sup>208</sup>

This *Counterinsurgency Field Manual's* introduction also briefly questions whether COIN might be a “‘plug and play’ capability” that could work “equally well in a United Nations peacekeeping operation.”<sup>209</sup> However, notwithstanding this sporadic recognition of the closely aligned tasks and goals of peacekeepers and counterinsurgents, there has been no scholarly analysis of these similarities, no public discussion of how COIN might practically be applied to peacekeeping operations, and no call for the U.N. to incorporate the doctrine into its current and future missions.

It is time that these failings were swiftly remedied. The U.N. should reform its current operations in Congo and elsewhere and incorporate principles of counterinsurgency into mission mandates and strategy. COIN doctrine focuses on the effective provision of population security, long-term political solutions to endemic violence, and increased government legitimacy, all areas where U.N. peacekeeping operations are in strong need of improvement. Furthermore, the doctrine is inherently logical, and has a proven record of effectiveness. The U.N. simply cannot afford to ignore its lessons any longer.

For decades, the U.S. military struggled in irregular wars because it was unwilling to reexamine its conventional understanding of conflict and conflict prevention. The U.N. is in a similar position today. Over the past six years, however, the U.S. Army and Marine Corps have recognized that conventional military tactics do not bring long-term pacification in modern intrastate conflicts. The record of recent U.N. peacekeeping operations demonstrates that conventional peacekeeping

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<sup>208</sup> Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xxiii. *See also id.* at xli (discussing the similarities between the current effort to incorporate COIN into U.S. military capacity and the failed Clinton-era struggle to develop capacity for “multilateral peace operations” that would have included “critical nation-building capabilities that could have proved crucial in Iraq”).

<sup>209</sup> *Id.* at xxiv. *See also id.* at xli (asserting that the failure of the United States to become involved in multilateral peacekeeping operations in 1990s was partially to blame for its lack of capacity in the type of nation-building required in Iraq).

strategies are equally inept at the task. The U.N. should learn from the mistakes of the U.S. military and embrace COIN doctrine before more civilian lives are lost. The United States, moreover, should support counterinsurgency-based reform of U.N. peacekeeping through its position on the Security Council and should assist the U.N. in its counterinsurgency efforts by promoting rule of law and security sector reform in areas of endemic conflict. It will be as beneficial for the U.S. military, particularly AFRICOM, to consider ways in which the unique cultural and military context in Congo fits into the existing COIN framework.<sup>210</sup>

#### IV. Incorporating Counterinsurgency Doctrine into Congolese Peacekeeping Operations

The following section presents six concrete ways that the U.N. and the United States can use counterinsurgency doctrine to revitalize its peacekeeping operation in Congo, noting areas where independent U.S. expertise would be particularly beneficial to the peace-building process. Implementing these recommended changes to MONUC's actions in Congo will demand departures from traditional peacekeeping strategy, just as the implementation of counterinsurgency doctrine into modern warfare has demanded changes in the way the military conceives of and fights modern wars. These changes, however, will be both desirable and lawful.

##### A. Peacekeeping and the Non-Use of Force Principle

Perhaps most notably, though counter-intuitively, effective use of counterinsurgency doctrine will require peacekeeping missions to drop all pretense of the "non-use of force" principle—the idea that force

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<sup>210</sup> In fact, there is reason to believe that current COIN doctrine might be even *more* well-suited for peacekeeping in Congo than it is for military activities in Iraq and Afghanistan. One critic of the COIN's broad applicability, David Kilcullen, has noted that while the doctrine is based largely on a "classical" theory of counterinsurgency, many modern insurgencies differ significantly from those of prior eras. In many ways, however, the rebel militia groups in Congo function like participants in what Kilcullen describes as a classical, rather than modern, insurgency. For instance, Congolese militias operate largely in a rural, rather than urban, environments, they do not make use of anonymous IED attacks, and they do not operate under a primarily faith-based approach. See David Kilcullen, *Counterinsurgency Redux*, 48 SURVIVAL 111–30 (2006).

should only be used by peacekeepers in self-defense. The MONUC is already equipped with a Chapter VII mandate, which provides the mission with the legal authorization to use force.<sup>211</sup> Additionally, MONUC has apparently been explicitly authorized to use force by a confidential note from the U.N. Office of Legal Affairs.<sup>212</sup> However, notwithstanding this fact, U.N.-directed force is seldom used by the mission's peacekeepers. As the U.N. noted in its 1995 *General Guidelines for Peacekeeping Operations*, although current missions have a broad authorization to use force to defend their mandates, "[i]n practice, commanders in the field have been reluctant to use their authority in this way, for well-founded reasons relating to the need for a peace-keeping operation to maintain the active cooperation of the parties to a conflict."<sup>213</sup>

Indeed, although MONUC is authorized to use "all necessary means" to promote its mandate, when peacekeepers participate in offensive campaigns, they currently do so by providing tactical and operational support to the Congolese army. Recent offensive missions have been under the operational control of the Congolese army, not the U.N. This is highly problematic because the Congolese army is incapable of defeating the FDLR, untrained in counterinsurgency, and extremely abusive towards the local population. Operations undertaken in support of the Congolese army, therefore, contradict MONUC's mandate to protect civilian populations and detract from MONUC's ability to gain support and cooperation from the local population—crucial to successful counterinsurgent warfare and lasting peace. The MONUC must *directly control* all forcible action in which it is involved, at least until the Congolese army gains the necessary capability and legitimacy to direct such action.

Force in peacekeeping should be directed against individuals or groups who attack civilians or prevent peacekeepers from fulfilling their mandates, or against "spoiler" elements who would prevent or destroy a

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<sup>211</sup> See U.N. Charter arts. 39–51 (addressing "Action with Respect to Threats to the Peace, Breaches of Peace, and Act of Aggression within Chapter VII).

<sup>212</sup> See Hum. Rts. Watch, *supra* note 101 ("[MONUC's] mandate permits peacekeepers to use force to disarm the FDLR on its own, without joining forces with the abusive Congolese army. The 1 April legal note from the Office of Legal Affairs specifically sets out this option.").

<sup>213</sup> U.N. Dep't of Peacekeeping Operations, *General Guidelines for Peacekeeping Operations* 20, U.N. Doc. 210/TC/GG95 (Oct. 1995).

fragile multilateral peace deal.<sup>214</sup> This type of force has an inherent neutrality: it is not directed against one particular party, *per se*, but rather against *any element that attempts to promote insecurity*, at a “tactical level.”<sup>215</sup> United Nations enforcement actions, in contrast, use force at the “strategic or international level.”<sup>216</sup> In peacekeeping, unlike in enforcement action, “coercion is not the primary aim [of the operation], but incidental thereto.”<sup>217</sup> The term “quasi-enforcement” is sometimes used to refer to robust peacekeeping operations’ neutral use of force not against a specific target, but with a specific aim.<sup>218</sup>

Either MONUC must demonstrate the willingness and ability to direct the use of offensive force against individuals who threaten civilians in Congo, no longer restricting itself to supporting operations undertaken by the Congolese army, or the Security Council must authorize other competent national troops, operating under non-U.N. command structures, to carry out the necessary enforcement action. Without the credibility to threaten or utilize force, the U.N. has no way of preventing the numerous militia groups that may be present in the country from continuing to terrorize civilians and jeopardize the political peace process. Classical, non-forceful peacekeeping (or “peace observation”), as originally conceived, will only work if *all* parties to a conflict are concerned with their own protection and want to prevent further hostilities.<sup>219</sup> If one side does not actually *want* peace, however, but is, instead, intent on massacring civilians, non-forceful consent-based peacekeeping will not be effective. Neutralization of violent elements of the population is necessary if a host state is to be strengthened to the point that it can itself provide security to the populace and prevent the

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<sup>214</sup> The term “spoiler” refers to individuals or factions who believe that an emerging peace or peace agreement threatens their interests or power, and therefore seek to undermine stability. Stephen John Stedman, *Spoiler Problems in Peace Processes*, 22 INT’L SECURITY 5, 5 (1997). See also Peter Uvin et al., *supra* note 13, at 79 (“[T]here seem to be two ways to end the threat of spoilers—either entice them to join the peace or coerce them. In the eastern DRC until now, however, neither MONUC nor the Congolese army has been able to achieve either.”).

<sup>215</sup> CAPSTONE DOCTRINE, *supra* note 195, at 34.

<sup>216</sup> *Id.* at 19, 34.

<sup>217</sup> Nicholas Tsagourias, *Consent, Neutrality/Impartiality, and the Use of Force in Peacekeeping: Their Constitutional Dimension*, 11 J. CONFLICT & SECURITY L. 465, 472 (2006).

<sup>218</sup> James Sloan, *The Use of Offensive Force in U.N. Peacekeeping: A Cycle of Boom and Bust?*, 30 HASTINGS INT’L & COMP. L. REV. 385, 391 (2007).

<sup>219</sup> See STEPHEN M. HILL & SHAHIN P. MALIK, PEACEKEEPING AND THE UNITED NATIONS, at xi–xii (2006).

continued rise of armed militia groups. Thus, without force, peacekeepers are ill-equipped to keep or promote peace in intra-state conflicts.<sup>220</sup>

Some critics have questioned the potential effectiveness of forceful peacekeeping, however, and one has decried a “boom and bust cycle” in the U.N., whereby force is increasingly used by the U.N., the resultant missions end in failure, the international community is chastened and peacekeeping’s role is reduced, and then forceful peacekeeping rises again, beginning a new cycle.<sup>221</sup> Forceful peacekeeping does indeed have a troubled past, and past failures beg two important questions—(1) why have forceful peacekeeping missions failed in the past, and (2) can they be adapted to become more successful? The most convincing answer to the first question is that while the *level* of force used in peacekeeping evolved swiftly in the years following the Cold War, the structural, strategic, and doctrinal elements required to use that force effectively never developed within the U.N.<sup>222</sup> Instead, U.N. peacekeeping operations have a vague and nearly incoherent command and control structure, which makes strategic and doctrinal innovation particularly difficult.<sup>223</sup> Originally, the Military Staff Committee of the Security Council was intended to have strategic control over U.N. military action, but it was prevented from doing so because of a Cold War stalemate.<sup>224</sup> When East-West relations warmed and the Security Council regained the ability to create and direct forceful operations, General Assembly and Secretariat-based bodies had already been created to guide peacekeeping action, and bureaucratic inertia has prevented their reorganization or dissolution.

As a result, current peacekeeping operations are “directed” by a myriad of disjointed organizations. When a new peacekeeping operation is created, the Security Council authorizes its deployment, gives it a

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<sup>220</sup> For this reason, some commentators have suggested that peacekeeping may not be viable in most interstate conflicts—a claim which has merit only in the absence of neutral, non-consent-based peace operations. See, e.g., P.F. DIEHL, *INTERNATIONAL PEACEKEEPING* 171–75 (1994).

<sup>221</sup> See Sloan, *supra* note 218.

<sup>222</sup> See John Gerard Ruggie, *The UN and the Collective Use of Force: Whither or Whither?*, in *THE UN, PEACE AND FORCE* 1, 1–2 (Michael Pugh ed., 1997).

<sup>223</sup> See JOHN HILLEN, *BLUE HELMETS: THE STRATEGY OF UN MILITARY OPERATIONS* 243 (2000).

<sup>224</sup> See U.N. CHARTER art. 43; HILAIRE MCCOUBREY & NIGEL D. WHITE, *THE BLUE HELMETS: LEGAL REGULATION OF UNITED NATIONS MILITARY OPERATIONS* 12 (1996); HILL & MALIK, *supra* note 219, at xi–xii.

mandate describing mission objectives, and recommends how the mission should be accomplished.<sup>225</sup> The Secretary General, however, appoints a force commander for the mission, and manages mission operations and logistics through Department of Peacekeeping Operations (DPKO)<sup>226</sup> and its newly-created Department of Field Support (DFS).<sup>227</sup> The Secretary General, DPKO, and force commanders together establish the rules of engagement for a given mission, and member states retain significant control over their donated peacekeeping troops.<sup>228</sup> Even the meaning of “self-defense” in a given set of rules of engagement may relate to the *national laws* of a given peacekeeping unit’s country of origin.<sup>229</sup> In short, current peacekeeping missions exist in an operational nightmare. The DPKO is currently undergoing a major reorganization in order to provide better, clearer guidance to peacekeeping troops on the ground,<sup>230</sup> but the currently opaque state of peacekeeping’s strategic control has severely hindered robust peacekeeping’s doctrinal evolution.<sup>231</sup>

As a result, forceful, intrastate peacekeeping currently exists in a doctrinal void. Doctrine is, however, vitally important to coordinated military action: it is the centralized expression of how military groups “contribute to unified action in campaigns, major operations, battles, and

<sup>225</sup> LINDA FASULO, AN INSIDER’S GUIDE TO THE UN 103 (2d ed. 2009).

<sup>226</sup> For further information on DPKO see U.N., Department of Peacekeeping Operations, available at <http://www.un.org/wcm/content/site/sport/dpko> (last visited July 22, 2010).

<sup>227</sup> *Id.* at 103. See also U.N. General Assembly, General Assembly Establishes Department of Field Support as It Adopts Fifth Committee Recommendations on Major Peacekeeping Overhaul, UN Doc. GA/10602 (Jun. 29, 2007).

<sup>228</sup> Captain Dale Stephens, *The Lawful Use of Force by Peacekeeping Forces: The Tactical Imperative*, 12 INT’L PEACEKEEPING 157, 158 (2005). One reason for reliance on national control is that U.N. peacekeeping staff has severe shortages. See Daniel & Hayes, *supra* note 194, at 115 (“The head of the Military Advisor’s Office in DPKO noted at the end of 1993 that his office (with 62 officers at the time) did what his army (Canada’s) would involve 1,000 people to do.”).

<sup>229</sup> See Stephens, *supra* note 228, at 165.

<sup>230</sup> See G.A. Resolution 61/256, UN Doc. A/RES/61/256 (Mar. 22, 2007).

<sup>231</sup> See HILLEN, *supra* note 223, at 243:

The United Nations had directed most of its military missions through an improvised system of command and control. The system that evolved was based on a loose definition of command that recognized the prerogatives of the nation-state in regard to its troops in UN service. In addition, . . . the control procedures of UN forces were improvised as the mission proceeded. . . . These conventions of command and control were disastrous in large, complex, and ambitious military missions operating in contested environments.

engagements.”<sup>232</sup> As such, doctrine serves to provide a “common language and a common understanding of how . . . forces conduct operations.”<sup>233</sup> John Nagl has described the role of military doctrine as “enormously important,” and has cited the lack of an adequate doctrine as one of the most critical failings of the Army’s initial invasion of Iraq.<sup>234</sup> Similarly, John Ruggie, a Harvard professor and former U.N. Assistant Secretary General and chief advisor for strategic planning to Kofi Annan, noted, in 1997, that an important factor in the U.N.’s failed peace operations was its “lack of any doctrinal understanding of ‘grey area’ operations together with a very poorly developed U.N. Command structure.”<sup>235</sup> Unfortunately, Ruggie’s criticism remains valid today, as does his admonishment that “without a more solid doctrinal basis, U.N. peace operations will have no future in the terrain between traditional peacekeeping and warfighting.”<sup>236</sup>

Yet the U.N. has persisted in using forceful peacekeeping in the absence of any centralized doctrine for the way in which that force is to be used.<sup>237</sup> Thus, it is not surprising that its use of force has tended toward failure. In essence, recent robust, forceful peacekeeping missions tried to break free of the Cold War constraints on force while continuing to operate in the strategic and doctrinal vacuum inhabited by less ambitious Cold War peacekeeping.

A solution, however, is not elusive. Counterinsurgency doctrine could furnish modern peacekeeping with the necessary principles for

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<sup>232</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 3-0, OPERATIONS ¶ 1-45 (2001).

<sup>233</sup> *Id.* ¶ I-46.

<sup>234</sup> Nagl, *Foreword*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xiv (“Although there are many reasons why the Army was unprepared for the insurgency in Iraq, among the most important was the lack of current counterinsurgency doctrine when the war began.”).

<sup>235</sup> Ruggie, *supra* note 222, in THE UN, PEACE AND FORCE 1, 1–2 (Michael Pugh ed., 1997).

<sup>236</sup> *Id.* at 13. See also Michael Pugh, *From Mission Cringe to Mission Creep?: Concluding Remarks*, in THE UN, PEACE AND FORCE 191, 191 2 (Michael Pugh ed., 1997) (agreeing that “the UN lacks an appropriate strategic doctrine for ‘grey area’ operations in intrastate conflicts”).

<sup>237</sup> See Ian Johnstone, *Constraining and Enabling the Use of Force: Discursive Power in the UN Security Council*, 2 J. OF INT’L LAW & INT’L RELATIONS 73, 83 (2005) (“[T]he UN ought to have a peace operations “doctrine[.]” . . . but due to political sensitivities it does not possess, other than what appears in training manuals, a master list of standard rules of engagement, and various semi-official documents like the 2003 UN Handbook on Multilateral Peacekeeping Operations. As a result, there is no set policy on the responsibility of peacekeepers to protect civilians.”).

humanitarian use of force. The doctrine is tailored specifically to multi-dimensional, intrastate conflicts and carries a proven history of effectiveness. Counterinsurgency can fill peacekeeping's current doctrinal void and furnish missions with the tools they need to use force in an effective, sustainable manner to prevent civilian violence and promote lasting peace and security.

#### B. Implementing COIN Doctrine

In addition to the necessary changes in MONUC's attitude regarding the use of force, other changes in MONUC strategy and organization are also desirable. These changes include increased peacekeeping troop numbers, a more coercive attitude towards host nation security sector reform, a complete overhaul of MONUC's intelligence collection capabilities, and a much more hands-on approach to technical assistance and training aimed at helping the Congolese government provide basic civil services to Congo's population—particularly in the area of the justice and rule of law reform. Although many of these changes may seem radical, all will be lawful, and all are necessary to the creation of effective peacekeeping strategy.

In order to bring MONUC operations more in line with principles of counterinsurgency, the U.N. should:

1. Increase peacekeeping troop numbers;
2. focus on securing eastern Congo's civilian population, using the "clear-hold-build" approach;
3. direct resources towards efficient, effective intelligence collection and dissemination;
4. vet and train a legitimate, effective national army;
5. promote Rule of Law through Technical Assistance and Training; and
6. work to foster a political solution.

Each recommendation is discussed below in detail.

##### *1. Increase Peacekeeping Troop Numbers*

The Security Council should increase MONUC's authorized troop strength, and contributing countries should provide more forces to the



mission. Sufficient troop density is essential to counterinsurgency warfare. In his classic treatise on counterinsurgency, David Galula asserts that “intensity of efforts and vastness of means” form one of four crucial “laws” of successful counterinsurgency campaigns.<sup>238</sup> According to Galula, the “numerical strength of the armed forces in relation to the size and population of [a] country” is fundamental to victory in unconventional conflicts.<sup>239</sup> In calculating necessary troop numbers, COIN doctrine, therefore, looks to the number of civilian population at risk, rather than the number of hostile enemy combatants present in a given area. Galula stresses that “[t]he operations needed to relieve the population from the insurgent’s threat and to convince it that the counterinsurgent will ultimately win are necessarily of an intensive nature and of long duration. They require a large concentration of efforts, resources, and personnel.”<sup>240</sup> He therefore suggests a very high counterinsurgent troop density of one soldier for every ten or twenty civilians at risk.<sup>241</sup>

The *Counterinsurgency Field Manual* suggests that the minimum troop density required for counterinsurgency warfare is twenty counterinsurgents for every one thousand residents (one counterinsurgent for every fifty insurgents).<sup>242</sup> Of course, there is no mathematical formula that can produce a magic number for troop density requirements—troop needs will be affected by a number of non-quantifiable factors such as geography, strength, and entrenchment of an insurgency, competence of host nation forces, and civilian population density.<sup>243</sup> However, the 20/1000 ratio suggested by the *Counterinsurgency Field Manual* provides a workable benchmark for U.N. force strength in Congo and has roots in robust historical and quantitative analysis. James Quinlivan, a mathematician at Rand Corporation, suggested as early as 1995 that troop numbers for counterinsurgency campaigns should be based on numbers of local civilian population.<sup>244</sup> This is because counterinsurgency’s “hearts and

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<sup>238</sup> See GALULA, *supra* note 136, at 55.

<sup>239</sup> *Id.* at 20.

<sup>240</sup> *Id.* at 55 (noting additionally that “efforts cannot be diluted all over the country” and therefore should be “applied successively area by area”).

<sup>241</sup> *Id.* at 20–21.

<sup>242</sup> COUNTERINSURGENCY FIELD MANUAL, *supra* note 140, at 23.

<sup>243</sup> See, e.g., JOHN J. McGRATH, BOOTS ON THE GROUND: TROOP DENSITY IN CONTINGENCY OPERATIONS (2006), [http://www.cgsc.edu/carl/download/csipubs/mcgrath\\_boots.pdf](http://www.cgsc.edu/carl/download/csipubs/mcgrath_boots.pdf).

<sup>244</sup> James Quinlivan, *Force Requirements in Stability Operations*, PARAMETERS, Winter 1995, at 59–69.

minds” approach to stabilization is largely focused on securing civilians and thereby gaining their support.<sup>245</sup> After analyzing past data points for successful stabilization programs, Quinlivan concluded that a ratio of 20/1000 is the minimum troop density likely to bring success in counterinsurgency operations.<sup>246</sup>

Although MONUC is currently authorized to deploy up to 19,815 military personnel, its current presence in Congo includes just 18,884 troops, supplemented by 712 “military observers” and 1223 police.<sup>247</sup> There are currently an estimated 1,669,323 civilians at risk in eastern Congo.<sup>248</sup> By this measure, the optimal number of military peacekeepers for the region is roughly 33,000. While this estimation is somewhat arbitrary, it nonetheless seems clear that a significant troop influx is desirable if peacekeeping efforts are to succeed in the region.

Unfortunately, however, the most recent mandate for the U.N. peacekeeping mission in Congo calls for a troop *drawdown*, with 2000 peacekeepers expected to vacate their posts in relatively stable parts of the country.<sup>249</sup> This decision represents a step backwards. The Security Council should swiftly provide authorization for *increased* troop levels that meet or exceed the threshold discussed above, and should redirect any troops being withdrawn from Congo’s more peaceful regions into the troubled east. In the past, the Security Council has increased troop levels for MONUC through successive, incremental authorizations intended to increase mission effectiveness. However, these incremental increases have not succeeded in stabilizing the region. The Security Council should stop providing band-aids for the failing mission—instead, the mission needs complete overhaul and a one-time troop surge would be highly desirable. The longer the Security Council waits to add additional

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<sup>245</sup> *Id.*

<sup>246</sup> James Quinlivan, *Burden of Victory: The Painful Arithmetic of Stability Operations*, RAND REV., Summer 2003, at 28. See also Stephen Budiansky, *A Proven Formula for How Many Troops We Need*, WASH. POST, May 9, 2004, at B04; Colonel Daniel Smith (Ret.), *Iraq: Descending into the Quagmire*, FOREIGN POL’Y IN FOCUS, June 1, 2003, [http://www.fpiif.org/articles/iraq\\_descending\\_into\\_the\\_quagmire](http://www.fpiif.org/articles/iraq_descending_into_the_quagmire).

<sup>247</sup> See MONUC: United States Mission in the Democratic Republic of Congo, MONUC Facts and Figures, available at <http://www.un.org/en/peacekeeping/missions/monuc/facts.shtml> (last visited June 25, 2010).

<sup>248</sup> See UNHCR: The UN Refugee Agency, Democratic Republic of the Congo, Statistical Snapshot, available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e45c366> (last visited June 3, 2010).

<sup>249</sup> See S. C. Res. 1925, *supra* note 1.

troops to secure Congo's civilian population, the more entrenched and powerful rebel groups will become and the more intractable the conflict becomes. The Security Council should, therefore, act now, providing a concentrated influx of troops to stabilize the situation and put an end to endemic violence in the region. Only then can MONUC begin to achieve its mission goals of disarming Congo's rebel militias and creating lasting peace in the country.

2. *Focus on Securing Eastern Congo's Civilian Population, Using the Clear-Hold-Build Approach*

The MONUC should no longer support any Congolese army-led offensive against the FDLR.<sup>250</sup> Instead, peacekeepers should *direct* efforts toward securing Congo's civilian population using the "clear-hold-build" approach provided by counterinsurgency doctrine, and should assist the Congolese army in building the capacity to fight alongside peacekeepers in a disciplined and effective manner.<sup>251</sup> Clear-hold-build, sometimes referred to as the "ink blot" approach, consists of the following steps: first, use high troop levels and a high degree of military force to remove insurgent elements from an area.<sup>252</sup> Next *maintain* civilian security to build trust and support within the civilian population, who will provide crucial intelligence on insurgent activity and whereabouts. Finally, after *holding* territory long enough to build strong relationships among the local population and contribute to the return of sufficient levels of order and economic activity, *build* on that stability, moving out from the borders of the secure territory like a widening "ink blot."<sup>253</sup>

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<sup>250</sup> Although MONUC has recently claimed to have a degree of operational control Congolese army actions during the current *Amani Leo* ("Peace Now") campaign, the degree of actual knowledge and control possessed by MONUC is questionable: accusations of (unknowing) U.N. support for initiatives involving human rights abusers have continued in recent months. MONUC should redouble its efforts to establish command control over disarmament operations.

<sup>251</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 174–84 (discussing clear-hold-build).

<sup>252</sup> *Id.* at 175–77.

<sup>253</sup> See *id.* at 174 ("[Counterinsurgency] efforts should begin by controlling key areas. Security and influence then spread out from secured areas.").

The premise of the ink blot approach is that counterinsurgents can secure one area or city at a time, subsequently “reinforce[ing] success by expanding to other areas.”<sup>254</sup> The approach aims to:

- (1) “Create a secure physical and psychological environment”;
- (2) “Establish firm government control of the populace and area”; and,
- (3) “Gain the populace’s support.”<sup>255</sup>

Counterinsurgents attempt to reach these goals through a process of developing “a long-term, effective [host nation] government framework and presence that secures the people and facilitates meeting their basic needs. Success reinforces the [host nation] government’s legitimacy.”<sup>256</sup> Thus, clear-hold-build operations contemplate *lasting* infrastructure and security build-up, not just short-term offensive action. As a result, these operations are directed at creating *lasting*, sustainable peace.

This long-term process of peace *maintenance* contrasts sharply with conventional offensive military strategy, which would require troops to move on from “cleared” areas and swiftly acquire new enemy territory. A similar conventional approach is currently being followed by the Congolese army, with support from MONUC. This approach is having disastrous results: As the Congolese army and MONUC move on from “cleared” areas, FDLR combatants return to these areas and retaliate against civilians. As previously discussed, the Congolese army’s recent offensive has, in fact, led to a marked increase in violence against civilians in the region.

Furthermore, MONUC peacekeepers are unable to provide credible security to Congolese civilians. Peacekeepers in Congo currently operate from bases outside of civilian areas, and they patrol large areas of the country in tanks and trucks. As such, they are unable to secure civilians, since attacks often occur at night, when peacekeepers are generally absent, or when the troops are patrolling another area. The U.N. should change these strategies by looking to counterinsurgency doctrine and adopting an effective clear-hold-build approach.

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<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

*Clear.* First, MONUC should focus its efforts on small areas of North Kivu that have been subject to FDLR reprisal attacks and clear those areas, providing sustained civilian security. The areas chosen for initial clearing operations should not be main FDLR strongholds, since attacking an area where FDLR presence is entrenched would likely result in acute warfare and civilian casualties.<sup>257</sup> Instead, MONUC should choose areas where civilians are at risk and in need of protection but where the majority of the population is unlikely to be sympathetic to FDLR goals. MONUC should “clear” those areas of FDLR combatants, “remov[ing] all enemy forces and eliminat[ing] organized resistance in [the] assigned area.”<sup>258</sup>

In order to successfully clear a town of violent elements, MONUC must disarm, destroy, capture, or force the withdrawal of all FDLR combatants in the area.<sup>259</sup> This could be accomplished through a “cordon and search” operation, a tactic that the Security Council has already authorized and encouraged MONUC to utilize.<sup>260</sup> Peacekeeping units comprised of special forces, possibly acting under contributing countries’ national command structures rather than that of MONUC,<sup>261</sup> could be used to swiftly and capably neutralize FDLR hardliners while other peacekeeping troops secure surrounding civilians. The MONUC or independent troop-contributing countries should set up forces along major routes outside of towns being “cleared,” thereby preventing the FDLR from moving freely to inhabit other civilian areas.

It is absolutely essential that clearing operations are undertaken with MONUC leadership (or that of troop-contributing countries), not under Congolese army direction. The Congolese army has exhibited both ineptitude and a flagrant disregard for human rights in its recent offensive action, and MONUC should not support any of its offensive operations until it undergoes much-needed reforms. Because MONUC leadership is essential to an effective, human rights-based approach to

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<sup>257</sup> *See id.* at 175 (“To create success that can spread, a clear-hold-build operation should not begin by assaulting the main insurgent stronghold.”).

<sup>258</sup> *Id.* at 175–76.

<sup>259</sup> *Id.* at 176.

<sup>260</sup> *Id.* (“This task [clearing an area] is most effectively initiated by a clear-in-zone or cordon-and-search operation.”); S.C. Res. 1592, *supra* note 12 (“stress[ing]” that “MONUC may use cordon and search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups”).

<sup>261</sup> Allowing special forces units to operate outside the U.N. command structure would increase the likelihood that the United States or other countries with highly-developed militaries might contribute troops to the operation.

insurgent disarmament, and because disarmament will require both the use of force and the credible threat to use force, MONUC should drop all pretense of the “non-use of force” principle. Peacekeepers are already authorized to take all necessary actions to disarm insurgents and protect civilians,<sup>262</sup> but they must be permitted to do so without fear that they are violating some unspoken tenet of “non-forcible” peacekeeping.

*Hold.* Even more importantly, MONUC should remain in newly cleared areas for a sustained period of time, allowing for normalization of civilian activities and building up local security-sector capacity. MONUC’s mandate during this phase should be to:

- (1) “Provide continuous security for the local populace”;
- (2) “Eliminate [militia group] presence”;
- (3) “Reinforce political primacy”;
- (4) “Enforce the rule of law”; and,
- (5) “Rebuild local host [Congolese government] institutions.”<sup>263</sup>

The MONUC should create mobile bases close to the dwellings of local civilians<sup>264</sup> and develop strong ties and intelligence contacts with the local population in those areas. Peacekeepers might conduct a census to identify local inhabitants and protect against future FDLR incursions, survey the populace about its resource and civil engineering needs, and train the Congolese army or a local police force to provide lasting security in the area.<sup>265</sup>

The perceived safety of area civilians is key to the success of counterinsurgency operations, because civilians who do not feel safe from reprisal attacks are far less likely to risk supporting counterinsurgents.<sup>266</sup> Contact with local civilians is therefore crucial to a successful counterinsurgency campaign, and “tasks that provide an overt

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<sup>262</sup> See Hum. Rts. Watch, *supra* note 101 (referencing a leaked April 1 “legal note” from the U.N. Office of Legal Affairs).

<sup>263</sup> This list of tasks is taken from *The Counterinsurgency Field Manual*. THE COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 174–75.

<sup>264</sup> See, e.g., Editorial, *supra* note 7 (noting that a U.N. assessment team has urgently recommended setting up a base in Busurungi, the site of a recent massacre, but that no base has been established).

<sup>265</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 179.

<sup>266</sup> See *id.* at 179.

and direct benefit for the community” must be “key, initial priorities.”<sup>267</sup> Tasks should be undertaken to help create a sense of normalcy and government legitimacy in civilian areas. These might include collecting and clearing trash, removing insurgent symbols from public areas, building or improving roads, creating sources of potable water, building and improving schools, and providing guides and translators.<sup>268</sup> These tasks, all recommended by the *Counterinsurgency Field Manual*, represent only a small sample of the services that might be provided: the actual tasks undertaken should be tailored to the specific needs of any particular civilian population.<sup>269</sup>

The MONUC should enlist its troops, U.N. civil staff, Congolese civilians, and Congolese national army troops to assist with these tasks. This will increase the legitimacy of these groups in the eyes of local civilians and contribute to a lasting infrastructure that will discourage future militia power in the region. Additionally, it would be beneficial to set aside U.N. or donor funds to pay local civilians to undertake some of the necessary building and service provision work.<sup>270</sup> This would help local civilians reassert ownership over their communities, boost local economies, and create alternative means of financial support for those who might otherwise turn to insurgent groups for money or food.

*Build.* Finally, after establishing their intention to provide population security to local civilians and protect them from insurgent attacks, and after gaining credible intelligence from the population about the whereabouts of FDLR hold-outs, MONUC and the Congolese army should move out from stable areas in concentric circles, building stability like a growing “ink blot.” It is crucial, of course, that a number of soldiers or newly-trained police units stay behind in these towns, continuing to provide population security and standing ready to alert peacekeepers if FDLR forces attempt to return and attack civilians, and this is perhaps an area where other competent national troops, such as

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<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 179–80.

<sup>269</sup> One Indian peacekeeping officer interviewed by the author in January 2008 provided a fantastic example of the flexibility and service provision required of successful counterinsurgent troops. Upon arriving in North Kivu, he surveyed community leaders in his area of operations (AO), determined that a source of drinking water was the biggest need of the local inhabitants, and set about immediately and very publicly building a well. This sort of adaptability should be promoted in all officers through an official doctrine. Interview with MONUC military officer, North Kivu, Democratic Republic of the Congo (Jan. 2008).

<sup>270</sup> *Id.* at 179.

U.S. Soldiers and Marines not operating within the U.N. command structure, could be of assistance.

3. *Direct Resources Towards Efficient, Effective Intelligence Collection and Dissemination*

The Security Council and MONUC should direct more resources towards efficient and effective intelligence collection and sharing. Intelligence is crucial to counterinsurgency operations:

Without good intelligence, counterinsurgents are like blind boxers wasting energy flailing at unseen opponents and perhaps causing unintended harm. With good intelligence, counterinsurgents are like surgeons cutting out cancerous tissue while keeping other vital organs intact. Effective operations are shaped by timely, specific, and reliable intelligence gathered and analyzed at the lowest possible level and disseminated throughout the force.<sup>271</sup>

Intelligence is equally crucial to the peace-building effort in Congo. The MONUC should gather intelligence on the structure, organization, and military activity of the Congolese army, the FDLR, and other militia groups. Without a firm understanding of Congolese army troop make-up, operations, and abuses, MONUC-directed security-sector reform and capacity-building efforts are far less likely to succeed. Unfortunately, there is currently a dearth of such information.<sup>272</sup>

The U.N. has been historically diffident about intelligence collection and dissemination in its peacekeeping operations. According to Frank van Kappen, former military advisor to the U.N. Secretary General, “[t]he traditional attitude within the UN system is that intelligence gathering is contrary to the open nature of the UN system and is therefore absolutely forbidden.”<sup>273</sup> The U.N. has attempted to avoid even using the term “intelligence,” “preferring the term ‘information’ in order

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<sup>271</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 179.

<sup>272</sup> Interview with MONUC Military Spokesman, Goma, Congo (Jan. 2008).

<sup>273</sup> Frank van Kappen, *Strategic Intelligence and the United Nations*, in PEACEKEEPING INTELLIGENCE: EMERGING CONCEPTS FOR THE FUTURE 3, 3 (Wies Platje et al. eds., 2003).



to avoid the usual connotations of subterfuge and secrecy.”<sup>274</sup> United Nations officials, relating “intelligence” to espionage, have long considered the term a “dirty word” and approached anything approximating intelligence collection with extreme caution.<sup>275</sup>

This did not create a significant problem for early missions: Intelligence was not necessary in traditional peacekeeping operations, which operated in already-stabilized environments and monitored cease-fires between consenting states.<sup>276</sup> As peacekeeping came to be used in the context of stabilizing intra-state conflicts, however, the need for credible intelligence became paramount. Many members of the U.N. Department of Peacekeeping Operations (DPKO) military staff have recognized this need, asserting that it would be dangerous and unprofessional to undertake robust peacekeeping without solid intelligence. Other individuals within the U.N. Secretariat, however, view a permissive attitude toward intelligence as something “negative, or even despicable.”<sup>277</sup> Intelligence collection is still, therefore, approached with trepidation by U.N. peacekeepers.<sup>278</sup>

This apprehensive posture on intelligence collection must change. Counterinsurgency—indeed, conflict stabilization in general—relies on accurate intelligence gathered from the local population.<sup>279</sup> The very success or failure of a counterinsurgency mission depends on the effectiveness of efforts to collect intelligence.<sup>280</sup> This is because counterinsurgency is an “intelligence-driven endeavor.”<sup>281</sup> Intelligence is necessary in counterinsurgency operations to facilitate understanding of the civilian population, the host government, and relevant rebel militias.<sup>282</sup> In counterinsurgency warfare, “commanders and planners require insight into cultures, perceptions, values, beliefs, interests and

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<sup>274</sup> Hugh Smith, *Intelligence and UN Peacekeeping*, 36 SURVIVAL 229, 229 (1994).

<sup>275</sup> See INT’L PEACE ACAD., PEACEKEEPER’S HANDBOOK 39 (1984).

<sup>276</sup> van Kappen, *supra* note 273, at 4.

<sup>277</sup> *Id.*

<sup>278</sup> Hum. Rts. Watch, *supra* note 101.

<sup>279</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 79.

<sup>280</sup> *Id.* (“Effective, accurate, and timely intelligence is essential to the conduct of any form of warfare. This maxim applies especially to counterinsurgency operations; the ultimate success or failure of the mission depends on the effectiveness of the intelligence effort.”).

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

decision-making processes of individuals and groups.”<sup>283</sup> The doctrine, therefore, puts a strong emphasis on intelligence collection.

United Nations peacekeepers in Congo have similar needs for intelligence, and MONUC would be wise to adopt counterinsurgency doctrine’s focus on intelligence efforts. The MONUC should gather information about local civilian needs, backgrounds, values, and beliefs, so that existing problems can be redressed by the U.N. and, eventually, the Congolese government, creating a sense of order and building government legitimacy in key areas. The MONUC should also gather intelligence on the structure, integration level, activities and deployment patterns of Congolese army units currently deployed in North Kivu. This is a necessary precursor to much needed security-sector reform. Finally, MONUC should attempt to gauge civilian perceptions of both peacekeepers and local army units, with an eye to identifying problems that can be addressed to build counterinsurgent support and national legitimacy.

Intelligence collection will be crucial to MONUC’s success at building peace and stability in Congo. Intelligence efforts should, therefore, not be relegated to MONUC civil units or a centralized bureaucracy. Instead, *every MONUC military battalion should be equipped for intelligence collection and analysis.*<sup>284</sup> Intelligence capabilities must be integrated into operational units, because military action and intelligence are symbiotic.<sup>285</sup> Intelligence collected by MONUC troops on the ground should be distributed to other MONUC troops and military staff through a streamlined, efficient process. In this way, peacekeeping troops will be able to build on the knowledge and efforts of fellow units.

Ultimately, the importance of efficient dissemination of intelligence lies in the central role accurate intelligence will play in helping MONUC prevent attacks on civilians. If peacekeepers know the whereabouts of rebel militias or have information regarding their plans to carry out attacks against civilians, they will often be able to prevent those attacks

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<sup>283</sup> *Id.* at 80.

<sup>284</sup> *See id.* (“All operations have an intelligence component. All Soldiers and Marines collect information whenever they interact with the populace. Operations should therefore always include intelligence collection requirements.”).

<sup>285</sup> *Id.* at 118–19 (noting that “[i]ntelligence drives operations and successful operations generate additional intelligence,” while “[o]perations conducted without accurate intelligence may upset the populace and lead them to offer less information”).

and protect civilians from atrocities. Protecting civilians is MONUC's direct purpose in Congo, and intelligence is crucial to that aim. The MONUC's mission must no longer be hindered by a lack of necessary intelligence. The Security Council should reform MONUC's mandate and structure to allow for the efficient collection and dissemination of crucial intelligence.

#### 4. *Vet and Train a Legitimate, Effective National Army*

Until host-nation security forces have both the legitimacy and the capacity to adequately protect the local population, Congolese civilians will likely continue to actively or passively support the militia groups that control large swaths of territory in the region.<sup>286</sup> It is therefore essential that the Congolese army be adequately trained and reformed so that it can provide credible, legitimate security to civilians in the region. Unfortunately, however, the Congolese army currently has almost no legitimacy in the eyes of Congolese civilians; it is responsible for a large portion of rapes, atrocities, and other violence in the region. In a November 2009 report, Human Rights Watch stated:

Congolese armed forces in eastern Democratic Republic of Congo have brutally killed hundreds of civilians and committed widespread rape in the past three months in a military operation backed by the United Nations . . . . In two fact-finding missions in eastern Congo in October 2009, Human Rights Watch documented the deliberate killing by Congolese soldiers of at least 270 civilians . . . . Most of the victims were women, children, and the elderly. Some were decapitated. Others were chopped to death by machete, beaten to death with clubs, or shot as they tried to flee.<sup>287</sup>

Reforms are sorely needed. The army must be restructured to break up pre-integration insurgent command structures and ensure that ethnic discrimination or rivalries within army units do not lead to tension or abuses. In order to achieve these goals, army command and control must

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<sup>286</sup> *Id.* at 94 (“When a government fails to provide security to its citizens or becomes a threat to them, citizens may seek alternative security guarantees. Ethnic, political, religious, or tribal groups in the [area] may provide such guarantees.”).

<sup>287</sup> Hum. Rts. Watch, *supra* note 101.

be centralized and streamlined. Officials in Kinshasa, army commanders in North Kivu, and MONUC staff should have up-to-date information on the exact make-up and troop numbers of every Congolese army battalion operating in the region, including the name and rank of every soldier. National army commanders must have the authority and capability to move battalions and individual soldiers between brigades and regions of the country, and MONUC must be equipped to provide advice about when such action is necessary. Furthermore, this information will be greatly helpful in establishing an effective military justice system, which will be crucial to ensuring that perpetrators of human rights abuses are stripped of their Congolese army uniforms and weapons and prosecuted or rehabilitated; the U.N. should establish a process for vetting the Congolese army to remove perpetrators of human rights abuse. The U.N. and western donors should condition continuing support for the Congolese government on Kinshasa's cooperation with information sharing and related restructuring and vetting of the army.

Additionally, the U.N. should focus a high percentage of its overall peacekeeping effort on the *training and development* of Congolese army forces in stabilized areas, so that those forces can take over the maintenance of security and allow MONUC to build stability in a concentric fashion, steadily enlarging areas of security in a sustainable manner. Training should be provided in military capability, strategy, tactics, logistics, counterinsurgency, and human rights. Training should *not* be limited to small "rapid response" or special forces teams, but should be focused on building overall security capacity and organization within the ranks of the army.

This is an area where the United States can be of particular assistance—as discussed in Part II.E, AFRICOM is currently engaged in training a "model unit" for the Congolese army. This initiative is likely to be highly beneficial to Congo—although Kisangani, where the new unit is based, is far from Congo's troubled eastern region, this geographical separation from overt conflict may be a positive factor. Soldiers trained in this battalion are less likely to have a stake in the continuing conflict in North Kivu, and they may therefore provide the basis for a much-needed neutral reform in the Congolese army.

However, as human rights abuses continue unabated by Congolese troops in the east, the United States would do well to supplement this intensive training of a "model unit" with additional command and control assistance to the Congolese army, focused on preventing abuses in the

Kivus. It is crucial that Congolese army commanders develop the capacity to effectively vet the newly-integrated army and remove human rights abusers from its ranks. Finally, it would greatly benefit the Congolese army if technical advisors and troops, either from the United States or the U.N., embedded with Congolese army units after they have received adequate preliminary training, providing further “on the job” support and training and preventing further human rights abuses.<sup>288</sup>

Finally, developed-nations should expand their funding for Congolese army troop payments to ensure that soldiers receive adequate, on-schedule pay. Although pay may ultimately come from external, non-Congolese sources, soldiers should be paid through existing or revitalized Congolese army structures. Predictable, timely payment for Congolese soldiers through a Congolese structure will greatly increase loyalty to the army and encourage the recruitment of qualified soldiers. It will also bolster army prestige, and make the prospect of being barred from the army for committing rapes or other human rights abuses far more likely to effectively deter soldiers from these acts.

##### 5. *Promote Rule of Law through Technical Assistance and Training*

The U.N. and the United States should work to promote rule of law in Congo by reforming the Congolese justice system. The criminal justice system in Congo is not only dilapidated and ill-functioning—it is, in many places, non-existent.<sup>289</sup> In fact, there is nothing “systematic” about justice in Congo—the small number of judges that do exist in the country are often unable to secure copies of Congolese laws and prior judgments,<sup>290</sup> and lack critical resources such as courthouses and salaries. Penal codes are contradictory, poorly-crafted, and largely aspirational, and a Constitution passed in 2006 describes a court system that has never been created. What is more, the jurisdiction of civilian and military courts overlaps and is highly uncertain. Since rape and other war crimes committed by the Congolese army and various rebel groups are a major impediment to stability in Congo, the question whether such crimes should be tried in military or civilian courts will be critical to judicial

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<sup>288</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 51.

<sup>289</sup> See SARAH DAREHSHORI, HUM. RTS. WATCH, SELLING JUSTICE SHORT: WHY ACCOUNTABILITY MATTERS FOR PEACE 51 (2009).

<sup>290</sup> Elena Baylis, *Reassessing the Role of International Criminal Law: Rebuilding National Courts Through Transnational Networks*, 50 B.C. L. REV. 1, 49 (2009).

reform efforts. The U.N. and donor states involved in peacebuilding in Congo should undertake a systematic study of the judicial infrastructure that currently exist in Congo and assist the nation in setting up a functional judicial system, capable of trying both military and civilian perpetrators in courts with clear jurisdictional boundaries.

Judicial reform will be absolutely essential to the establishment of lasting stability in Congo. In 2005, several commentators noted that “the root cause of regional insecurity in the great lakes is pervasive ill-governance.”<sup>291</sup> The U.N. has recognized this relationship between ill-governance and continuing conflict in Congo, noting that long-term efforts will be needed to consolidate democracy and good governance in the country before lasting peace is likely.<sup>292</sup> Indeed, MONUC is mandated to “support democratic institutions and the rule of law in Congo.”<sup>293</sup> However, MONUC and donor nations must greatly increase their efforts to promote rule of law and good governance in Congo through both technical assistance and direct political pressure. Good governance and rule of law operations are central to the success of any counterinsurgency operation. As counterinsurgency forefather David Galula observes, “if anarchy prevails in Country X, the insurgent will find all the facilities he needs in order to meet, to travel, . . . to receive and to distribute funds, to agitate and to subvert, or to launch a widespread campaign of terrorism.”<sup>294</sup> Justice sector reform, including the development of a rule of law culture and a functioning, neutral court system, is crucial to establishing government legitimacy, because when a rule of law culture predominates, and militia groups come to be viewed as “criminals,” they are likely to lose popular support.<sup>295</sup> The definition of “rule of law” published by the U.N. Security Council in 2004 is as follows:

Rule of Law is a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international

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<sup>291</sup> Uvin et al., *supra* note 13.

<sup>292</sup> S.C. Res. 1856, *supra* note 12, at 3.

<sup>293</sup> *Id.* at 5–6.

<sup>294</sup> GALULA, *supra* note 136, at 19 (asserting that “an incompetent bureaucracy plays into the hands of the insurgent”).

<sup>295</sup> COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 42.

human rights law . . . .<sup>296</sup>

This definition has been agreed upon by a range of national and multinational entities, including the U.S. Department of Defense, Department of State, and U.S. Agency for International Development. Rule of law, as defined above, is essential to any peaceful society. It functions to

protect against anarchy and the Hobbesian war of all against all. [In addition,] the Rule of Law should allow people to plan their affairs with reasonable confidence and they know in advance the legal consequences of various actions. [Finally,] the Rule of Law should guarantee against at least some types of official arbitrariness.<sup>297</sup>

Rule of law initiatives are, therefore, one of the most crucial aspects of governance reform in counterinsurgency operations.

Unfortunately, the justice sector in Congo is currently in need of widespread improvements. Ideally, a judicial reform program would include in-depth analysis of the system currently in place. However, the Congolese court system has simply ceased to function in many parts of the country.<sup>298</sup> For example, in one area of North Kivu, an abandoned concrete building bears a large sign proclaiming that it is a court of military justice.<sup>299</sup> Chickens wander in and out of the building, and children play on the grass near it—but that seems to be the extent of its use.<sup>300</sup> The MONUC military officers stationed nearby remarked that they have never seen the building used for any sort of trial.<sup>301</sup>

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<sup>296</sup> U.N. Security Council, U.N. Doc. S/2004/616 (Oct. 13, 2004).

<sup>297</sup> Richard H. Fallon, *The Rule of Law as a Concept in International Discourse*, 97 COLUM. L. REV. 1, 7–8 (1997) (footnotes omitted).

<sup>298</sup> See SARAH DAREHSHORI, HUM. RTS. WATCH, *SELLING JUSTICE SHORT: WHY ACCOUNTABILITY MATTERS FOR PEACE* 51 (2009).

<sup>299</sup> Author's Field Research Experience, *supra* note 14.

<sup>300</sup> *Id.* But see *Le tribunal militaire de garnison de Goma en audiences foraines à Walikake* (sic) *grace à l'appui du programme REJUSCO* (Mobile Court Session of the Goma Military Garrison Court Held in Walikale, Thanks to the Support of REJUSCO), Apr. 2009, available at <http://www.rejusco.org/pages/Audience%20foraine.htm> (describing the groundbreaking occurrence of a military trial in Walikale in April 2009).

<sup>301</sup> Interview with MONUC Military Officers, Walikale, in North Kivu, Congo (Jan. 2008).

Congo's struggle with a lack of judicial infrastructure and development dates back to the days of colonialism, when Congo functioned as a private holding of King Leopold II of Belgium.<sup>302</sup> Widely recognized as one of the most brutal and exploitative colonial regimes in Africa, the Belgian Colonial Administration largely ignored the task of strengthening local courts in Congo—something that was viewed even by contemporary Europeans as part of the “principal business of a tropical dependency.”<sup>303</sup> At the turn of the twentieth century, one British writer denounced the Colonial Administration in Congo for its failure to build even minimal judicial infrastructure in the country, declaring, “there is not a recognized native court from one end of the territory to the other . . . .”<sup>304</sup> Nevertheless, Belgium's colonial legacy in Congo did leave its mark on the country's legal system, which is based on Belgian law.<sup>305</sup> Congo functions under a civil law system that has roots in the 1804 Napoleonic Civil Code.<sup>306</sup>

Congo's legal development fared scarcely better in the thirty years following independence than it had under the Belgian colonial regime. Autocratic rule under Mobutu Sese Seko persisted in the country from the mid-1960s until 1997,<sup>307</sup> and the Mobutu regime spared little time or resources for the development of a justice system—corruption was rampant and the word “justice” was almost an anachronism. The state was run as Mobutu's personal fiefdom, and all authority ultimately rested with the erratic and megalomaniacal ruler.<sup>308</sup> In 1997, during the war which led to Mobutu's ouster, the justice system completely collapsed.<sup>309</sup> A new Military Penal Code was adopted by the transition government in

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<sup>302</sup> For general background on the Congo's colonial history, see ADAM HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* (1998).

<sup>303</sup> EDMUND D. MOREL, *RED RUBBER: THE STORY OF THE RUBBER SLAVE TRADE FLOURISHING ON THE CONGO IN THE YEAR OF GRACE 1906*, at 107 (3d. ed. 1907).

<sup>304</sup> *Id.*

<sup>305</sup> DUNIA ZONGWE ET AL., *GLOBALLEX, UPDATE: THE LEGAL SYSTEM AND RESEARCH OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC): AN OVERVIEW* (2008), [http://www.nyulawglobal.org/globalex/Democratic\\_Republic\\_Congo1.htm](http://www.nyulawglobal.org/globalex/Democratic_Republic_Congo1.htm).

<sup>306</sup> *Id.*

<sup>307</sup> See generally MICHELA WRONG, *IN THE FOOTSTEPS OF MR. KURTZ: LIVING ON THE BRINK OF DISASTER IN MOBUTU'S CONGO* (2002).

<sup>308</sup> See ROBERT B. EDGERTON, *THE TROUBLED HEART OF AFRICA: A HISTORY OF THE CONGO 207–15* (2002).

<sup>309</sup> GLOBAL RIGHTS, *SOS JUSTICE: WHAT JUSTICE IS THERE FOR VULNERABLE GROUPS IN EASTERN DRC?* 7 (2005) [hereinafter *SOS JUSTICE*].



2002,<sup>310</sup> but some rebel groups who did not accept the authority of this new government continued to operate under—and even hold military trials under—an older code of military justice from 1972.<sup>311</sup> Furthermore, in certain cases, the transition government suspended the operation of courts under the 1972 code without setting up any new courts to replace them.<sup>312</sup> After popular elections in 2006 confirmed Joseph Kabila as President, Kabila signed into law a new Congolese Constitution.<sup>313</sup> The 2006 Constitution contemplates widespread changes in the structure of the judicial system.<sup>314</sup> This new system, however, has not yet been put into place.

Under the existing, yet largely defunct system, the highest civilian court in Congo is the *Cour supreme de justice* (Supreme Court).<sup>315</sup> Under this Court sit the *Cour d'appel* (Court of Appeals) and *Tribunal de grande instance* (Superior Court).<sup>316</sup> Each of these courts is officially connected to an executive department of public prosecutions.<sup>317</sup> In addition to these courts are *tribunaux de paix* (magistrates' courts), which have the power to undertake investigations. Unfortunately, because of the dilapidated and chaotic state of the Congolese judicial system, there is very little publicly available information describing the roles and activities of these courts.<sup>318</sup> The judgments of Congolese courts are not published.<sup>319</sup> Even basic information about trial proceedings is difficult to obtain.<sup>320</sup> In fact, Congolese judges routinely have difficulty gaining access to judgments and even laws,<sup>321</sup> and so the current state of the legal sector—especially in rural areas—remains opaque. The MONUC is currently engaged in an effort to “map” the justice system, and this will hopefully lead to more cohesive information

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<sup>310</sup> CODE PÉNAL MILITAIRE, Loi No. 024/2002 of Nov. 18 2002, Journal Officiel, Numéro Spécial [Official Journal, Special Issue], Mar. 20, 2003 (Dem. Rep. Congo) [hereinafter CODE PÉNAL MILITAIRE].

<sup>311</sup> HUM. RTS. WATCH, *supra* note 84, at 27; CODE DE JUSTICE MILITAIRE, Loi no. 72/060 of Sep. 25, 1972 (Dem. Rep. Congo).

<sup>312</sup> HUM. RTS. WATCH, *supra* note 84, at 43.

<sup>313</sup> CONSTITUTION DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO, Feb. 18, 2006 (Dem. Rep. Congo).

<sup>314</sup> ZONGWE ET. AL., *supra* note 305.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *See* Baylis, *supra* note 290, at 49.

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

on the existing civilian legal infrastructure.<sup>322</sup> Such information is a necessary precursor to serious judicial reform efforts.

In addition to the civilian courts noted above, the following military courts operate (at least officially) in Congo: The *Haute cour militaire* (Military High Court) is the court of first instance for criminal prosecutions involving defendant generals, and is also the highest appellate court. Beneath the *Haute cour militaire* sit the *Cours militaires* (Military Courts), which function both as courts of appeals and as courts of first instance for higher-ranking officers. Lower courts include the *Tribunaux militaires de garnisons* (Military Garrison Courts) and *Tribunaux militaires de police* (Military Police Courts).<sup>323</sup> Under the 2006 Constitution, both the military and civil courts are supposed to be under the appellate jurisdiction of a *Cour de Cassation*; however, this high court, like many of the structures contemplated by the Congolese constitution, does not exist.<sup>324</sup>

Even where the justice system is officially operating, it is widely seen as incompetent and lacking in legal substance. According to a December 2009 Special Report by the U.N. Secretary General, military courts in the area around North Kivu did recently manage to conduct thirty prosecutions for offenses ranging from rape to war crimes; however, the report expressed “serious doubts regarding [the proceedings’] legal basis and their compliance with fair trial standards”—for instance, punishments handed down by the military courts have included the death penalty, even though there is a moratorium on capital punishment in Congo.<sup>325</sup> In one case, a *tribunal militaire de garnison* even held a trial in which several unknown and unnamed defendants were tried in absentia and sentenced to death.<sup>326</sup> In addition, U.N. experts have found the military justice system in Congo to be “weak and

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<sup>322</sup> MONUSCO, Rule of Law, Civilian Justice, available at <http://monuc.unmissions.org/Default.aspx?tabid=1893> (last visited July 22, 2010).

<sup>323</sup> ZONGWE ET. AL., *supra* note 305; HUM. RTS. WATCH, SOLDIERS WHO RAPE, COMMANDERS WHO CONDONE (2009) [hereinafter SOLDIERS WHO RAPE].

<sup>324</sup> ZONGWE ET. AL., *supra* note 305.

<sup>325</sup> The Secretary-General, *Thirtieth Report of the Secretary-General on the U.N. Organization Mission in the Democratic Republic of the Congo* ¶ 64, U.N. Doc. S/2009/623 (Dec. 4, 2009) [hereinafter *Thirtieth Report of the Secretary-General*].

<sup>326</sup> *Auditeur Militaire v. Katamisi*, RMP 249/KK/05, RP 011/05, slip op. at 5-6, Tribunal Militaire de Garnison [Military Garrison Court] Kindu, Oct. 26, 2005 (Dem. Rep. Congo) *discussed in* Baylis, *supra* note 290, at 35.

susceptible to executive interference by military or political decision-makers.<sup>327</sup>

Moreover, Congolese courts-martial have been extremely hesitant to try senior military officers, most likely because these officers hold significant political power in the region.<sup>328</sup> To date, no senior officer in Congo has been tried by a court-martial for a sexual crime.<sup>329</sup> One reason that trials of senior officers are so uncommon is that Congolese law permits courts-martial to try senior officers *only* when the sitting judge outranks them—a situation that rarely occurs.<sup>330</sup> Furthermore, commanders often try to protect their enlisted troops from judicial action, either by helping them avoid the court's jurisdictional reach or by exerting political pressure to prevent prosecutions.<sup>331</sup> According to one Congolese lawyer involved in training Congolese soldiers, “a commander does not want to cooperate with the military justice system, it is like a reflex.”<sup>332</sup> In some cases, local military commanders have even required prosecutors to seek their direct approval before issuing any arrest warrants.<sup>333</sup> Impunity for crimes against humanity is widespread in eastern Congo: despite hundreds of documented attacks on civilians by *Congolese* troops, the military prosecutor in Goma had only seventeen cases in May 2007, most involving desertion.<sup>334</sup>

A current example of this culture of impunity in the Congolese armed forces is Innocent Zimurinda, a Congolese army Colonel who is accused of civilian massacres, summary executions, rape, and the recruitment of child soldiers.<sup>335</sup> Although fifty Congolese Non-Governmental Organizations (NGOs) recently joined with Human Rights Watch to call for Zimurinda's arrest, he has not been prosecuted or even apprehended by Congolese authorities. Instead, he was recently spotted at a hotel down the road from MONUC headquarters in Goma, dressed in

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<sup>327</sup> Editorial, *DRC: US, UN Accuse Forces of 'Crimes Against Humanity'*, IRIN NEWS, Mar. 12, 2010, <http://www.irinnews.org/ReportID=88410>.

<sup>328</sup> SOLDIERS WHO RAPE, *supra* note 323, at 47–48 (“Military commanders are powerful figures in Congo, often perceived as being untouchable.”).

<sup>329</sup> *Id.* at 47.

<sup>330</sup> *Id.* at 48.

<sup>331</sup> *Id.* at 49.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.* at 48.

<sup>334</sup> HUM. RTS. WATCH, *supra* note 82, at 59.

<sup>335</sup> Editorial, *DR Congo: Congolese Groups Demand the Removal of Abusive Army Commander*, HUM. RTS. WATCH, Mar. 1, 2010, <http://www.hrw.org/en/news/2010/03/01/dr-congo-congolese-groups-demand-removal-abusive-army-commander>.

a pressed polo shirt and sipping coffee—hardly an embattled fugitive from the law.<sup>336</sup>

Unfortunately, the civilian justice system in Congo is in some ways even *less* effective than the military justice system—it is non-operational in many parts of the country, and civilian courts are seen by some as less trustworthy than military courts.<sup>337</sup> One recent example of the incapacity of civilian courts in Congo was the 2008 arrest and imprisonment, by Congolese authorities, of a herd of goats. Deputy Justice Minister Claude Nyamugabo discovered the goats during a routine prison inspection and secured their release. According to BBC News

The beasts were due to appear in court, charged with being sold illegally by the roadside. The minister said many police had serious gaps in their knowledge and they would be sent for retraining. Mr Nyamugabo was conducting a routine visit to the prison when, he said, he was astonished to discover not only humans, but a herd of goats crammed into a prison cell in the capital. He has blamed the police for the incident. It is not clear what will happen to the owners of the goats, who have also been imprisoned. BBC Africa analyst Mary Harper says that given the grim state of prisons in Congo, the goats will doubtless be relieved about being spared a trial. There was no word on what their punishment would have been, had they been found guilty.<sup>338</sup>

At the same time, many *human* prison sentences cannot be carried out due to lack of resources. For example, one soldier who was recently sentenced to prison time for rape could not be locked up because the jail in which he was supposed to be incarcerated had been destroyed during the war.<sup>339</sup>

There is a clear need for reform and investment in both civilian courts and courts-martial, but the necessary steps for reform raise a

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<sup>336</sup> Stephanie McCrummen, *Abusive Congolese Colonel Got Aid*, WASH. POST, Mar. 9, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/09/AR2010030900279.html>

<sup>337</sup> Baylis, *supra* note 290, at 32.

<sup>338</sup> Editorial, *DR Congo Frees Goats from Prison*, BBC NEWS, Sept. 10, 2008, <http://news.bbc.co.uk/2/hi/africa/7607460.stm>.

<sup>339</sup> *Id.*

perplexing problem of Congolese jurisprudence: There is a considerable lack of clarity regarding the jurisdictional scope of both court systems. According to the *2003 Military Penal Code*, military courts have exclusive jurisdiction over offenses enumerated therein, including genocide, war crimes, and crimes against humanity.<sup>340</sup> The *Code* further states that “military” offenses fall under its purview, and defines these offenses as those “undertaken by members of the military or the equivalent.”<sup>341</sup> Presumably, this would include members of local rebel groups. Understandably, several scholars and observers have concluded that courts-martial in Congo have exclusive jurisdiction over attacks by armed soldiers against civilians, regardless of whether the attacks are perpetrated by Congolese army soldiers or insurgents.

One scholar who performed legal research in Kinshasa in 2006 concluded that “military courts have exclusive jurisdiction over war crimes, crimes against humanity, and genocide and *over both civilians and members of the military who commit these crimes.*”<sup>342</sup> Similarly, Nicola Dahrendorf, the U.N. Special Advisor on sexual violence in Congo, has noted that the “jurisdiction of military courts is wide, in that it can judge the military, police and militia, as well as *civilians who commit crimes with weapons of war . . .*”<sup>343</sup> Indeed, trials of combatants not connected with the Congolese army have, at least sometimes, taken place in military courts.<sup>344</sup> Human Rights Watch observers, however, have stated that the military justice system has exclusive jurisdiction only over “members of the army and the police, as well as combatants of armed groups and civilians who commit crimes *against the army,*”<sup>345</sup> and that in cases of attacks on civilians, members of “local armed groups that are not integrated into the national army fall under the jurisdiction of the civilian courts.”<sup>346</sup> Indeed, civilian courts have, in some instances, asserted such jurisdiction, refusing to turn over cases involving non-Congolese army combatants to military courts.<sup>347</sup>

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<sup>340</sup> CODE PÉNAL MILITAIRE, *supra* note 310, arts. 8, 161, 207.

<sup>341</sup> *Id.* art. 40 (“*Les infractions d’ordre militaire sont celles qui ne sont commises que par des militaires ou assimilés.*”).

<sup>342</sup> Baylis, *supra* note 290, at 32.

<sup>343</sup> Nicola Dahrendorf, *MONUC and the Relevance of Coherent Mandates: The Case of the DRC*, in SECURITY SECTOR REFORM AND UN INTEGRATED MISSIONS 67, 83 (Heiner Hänggi & Vincenza Scherrer eds., 2008).

<sup>344</sup> See Baylis, *supra* note 290, at 31.

<sup>345</sup> SOLDIERS WHO RAPE, *supra* note 323, at 19.

<sup>346</sup> HUM. RTS. WATCH, *supra* note 84, at 22.

<sup>347</sup> *Id.* at 31.

The U.N. and other interested parties should undertake systematic investigation and analysis of the current military and civilian justice systems operating in Congo to determine the benefits and detriments of each system. The MONUC should then assist the Congolese legislature in clarifying the jurisdictional reach of each system, and should direct reform and expansion efforts simultaneously toward each system. Although the question whether to direct the majority of initial aid toward the military or civilian system will depend on the results of much-needed study of the current infrastructure, it is likely that the military system is in more crucial need of immediate reform.

The Congolese army is currently one of the worst perpetrators of human rights abuses in the country, and establishing military justice system capable of ending impunity for Congolese soldiers is a necessary first step to restoring the army's credibility. A functioning military justice system would allow for the establishment of a vetting process capable of removing perpetrators of civilian abuse from the army. These steps are critical and time-sensitive, because a credible army, capable of providing security to Congolese civilians, is a crucial prerequisite to lasting peace in the region. Military courts, however, should probably not be given jurisdiction over rebel combatants. Allowing military courts to try only recognized Congolese army soldiers and granting civilian courts jurisdiction over other combatants, would be beneficial in two ways: First, it would de-legitimize insurgent groups by treating them as common criminals, rather than as "equivalents" of the Congolese army. Second, it would allow a surge of initial reform efforts and resources to be directed *at prosecuting cases of abuse within the Congolese army*. This use of resources would be desirable because once the Congolese army begins to resemble a credible state security apparatus, it will, itself, be able to help protect civilians from further attacks by members of other armed groups. Actions to end impunity by the Congolese army are critical because they offer one of the *only ways of combating and deterring civilian violence* within the Congolese army—indeed, no other credible institution exists to protect civilians from this violence. The justice system, however, is not the sole method of combating violence by insurgent groups: If the Congolese army gains capacity and credibility, civilians can be protected from these groups *ex ante*.

Currently, however, impunity for abuses against civilians is rampant in the Congolese army. Reforms are not likely to come from the Congolese government without outside assistance and intervention; a

U.N. Special Report released last December found that the Congolese *Conseil Supérieur de la Magistrature*, the office responsible for the accountability of judges, is currently operating without a budget.<sup>348</sup> The report also found “systemic deficiencies, including with respect to the maintenance of criminal records.”<sup>349</sup> Outside actors must *exert pressure* on Congolese authorities to improve the military justice system and vet the Army to remove human rights abusers from command positions.

Kevin Kennedy, a U.N. spokesman, recently stated when questioned about Colonel Innocent Zimurinda, discussed above, that MONUC is “not in a position to tell the Congolese what they must do with any particular commander.”<sup>350</sup> This type of thinking must change—the U.N. must *pressure* Congolese authorities to arrest and prosecute those responsible for human rights abuses, and MONUC should assist Congolese authorities in this task. Additionally, MONUC should create a mechanism by which civilians and other victims can report human rights abuses, especially those perpetrated by state actors, without fear of reprisal. This would ensure that the U.N. remained independently informed of abuses coming from the Congolese government, and would allow MONUC to collect rape statistics, apply pressure for the investigation of suspected crimes, and provide victims with much-needed aftercare.

The MONUC has had a rule of law section since 1994, and the mission is mandated to assist with justice-sector reform in Congo. The MONUC’s current rule of law efforts include:

- Deploying a small number of technical staff tasked with creating a “pilot prosecution cell” in North Kivu to assist Congolese investigators and prosecutors in cases against soldiers accused of rape and other offenses;<sup>351</sup>
- Working with the Congolese Attorney General to rehabilitate prison facilities, train guards, and reduce prison overcrowding resulting from pretrial detention;<sup>352</sup>
- and

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<sup>348</sup> *Thirtieth Report of the Secretary-General*, *supra* note 325, ¶ 67.

<sup>349</sup> *Id.*

<sup>350</sup> McCrummen, *supra* note 336.

<sup>351</sup> *Thirtieth Report of the Secretary-General*, *supra* note 325, ¶ 64.

<sup>352</sup> *Id.* ¶ 68.

– Supporting a commission tasked with promulgating essential legislation and a new Congolese Constitution.<sup>353</sup>

In addition, MONUC applies pressure for prosecutions in particularly horrific cases of crimes against humanity<sup>354</sup> and has assisted in criminal trials by briefing the court on legal issues.<sup>355</sup> The European Union has also established the Program for the Restoration of Justice in Eastern Congo (REJUSCO) that renovates judicial infrastructure and supports mobile courts in rural areas,<sup>356</sup> and other Congolese and international organizations, including the American Bar Association, are currently participating in rule of law efforts in Congo.<sup>357</sup>

The U.N., donor states, and other organizations should coordinate their rule of law efforts with each other and with the numerous international NGOs active in Congo. As the *Rule of Law Handbook* states, “joint, inter-agency and multinational coordination is the basic foundation upon which all rule of law efforts must be built,” since “coordination and synchronization [are] to the rule of law what fires and maneuver [are] to the high intensity conflict.”<sup>358</sup> Indeed, cooperation is essential to the success of counterinsurgency-based stabilization, because civil programs are viewed by COIN doctrine as essential to the achievement of long-term counterinsurgent goals: They can address root causes of conflict and counteract the state of social disorder in which insurgencies thrive.<sup>359</sup> Currently, however, even the U.N.’s internal coordination in Congo between MONUC military staff and the myriad of U.N. civilian agencies there is greatly lacking.<sup>360</sup> This should be swiftly

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<sup>353</sup> MONUC: United States Mission in the Democratic Republic of Congo, Mandate, <http://www.un.org/en/peacekeeping/missions/monuc/mandate.shtml> (last visited June 3, 2010).

<sup>354</sup> See HUM. RTS. WATCH, *supra* note 84, at 46.

<sup>355</sup> See Baylis, *supra* note 290, at 48.

<sup>356</sup> REJUSCO, RDC: Programme d’appui à la restauration de la Justice à l’Est de la RDC (DRC: Support Program for Justice Restoration in Eastern DRC”), [http://www.btctb.org/doc/UPL\\_200903250921327612.pdf](http://www.btctb.org/doc/UPL_200903250921327612.pdf); HUM. RTS. WATCH, *supra* note 327, at 45.

<sup>357</sup> SOLDIERS WHO RAPE, *supra* note 327, at 45–46.

<sup>358</sup> RULE OF LAW HANDBOOK, *supra* note 131, at ii.

<sup>359</sup> COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 54.

<sup>360</sup> In several MONUC bases visited by the author in January 2008, force commanders were entirely unaware of relevant actions by MONUC civil officials or other U.N. organizations operating in the country. There was a general feeling that a centralized coordination mechanism was lacking and that non-military U.N. staff in-country was



remedied, and reform must come from the top, starting with U.N. civilian officers responsible for operations in the region. A centralized communication and coordination system must be built into the MONUC structure in order to coordinate intra-U.N. stabilization efforts in the region. Complete unity of effort will be needed to achieve lasting peace in the region.<sup>361</sup>

The MONUC, the United States, and other donor states and NGOs should direct immediate attention to the following critical rule of law efforts in Congo:

1. Promote legislative reform to remove impediments barring the prosecution of high-ranking military officers in many courts-martial;
2. Map the military and civilian justice systems to identify courts, judges, and prosecutors currently operating;
3. Run training programs to increase the pool of competent judges, prosecutors, and investigators;
4. Direct aid money toward the payment of salaries and expenses for the aforementioned officials;
5. Provide “on the job” training and mentoring for judges, prosecutors, and investigators;
6. Establish a judicial recordkeeping system and provide all judges, prosecutors, and investigators with copies of relevant penal codes and jurisdictional rules; and
7. Build judicial infrastructure, including court buildings and offices.

All of these tasks are consistent with COIN doctrine’s rule of law approach, and all are necessary precursors to the establishment of legitimate, credible Congolese security forces capable of promoting stability in the region.

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resistant to the idea of communication and cooperation with MONUC military units. Interviews with MONUC Military Officers, in North Kivu, Congo, Jan., 2008.

<sup>361</sup> See COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 57 (“Achieving unity of effort is the goal of command and support relationships. All organizations contributing to a COIN operation should strive, or be persuaded to strive, for maximum unity of effort.”).

### 6. *Work to Foster a Political Solution*

Finally, the U.N. must make a concerted effort to assist the parties to the conflict in eastern Congo in reaching a sustainable, political peace agreement. Insurgencies are essentially political creatures, and although counterinsurgency doctrine can provide effective tools for decreasing levels of civilian violence and promoting space for political reconciliation, a political peace process is still necessary for long-term stabilization. In fact, one of the guidelines of the doctrine is to *promote* a political solution to problems that are sparking continued conflict.<sup>362</sup>

The Security Council has already called on all “illegal armed groups” within Congo to “lay down arms.”<sup>363</sup> However, the majority of combatants in eastern Congo are extremely unlikely to comply with this resolution before a political solution is reached. The CNDP, for instance, has claimed to be protecting Congolese Tutsis from violence or extermination at the hands of Hutu extremists. If its recent integration into the army fails or does not bring about its desired goals, the CNDP will be unlikely to disarm. Likewise, many Hutu FDLR fighters, even those too young to have participated in the genocide, fear that if they attempt to peaceably return to Rwanda, they will be arrested or persecuted.<sup>364</sup> Rwanda’s failure thus far to publish a list of the individuals who are wanted for war crimes has exacerbated these fears.<sup>365</sup> Only a comprehensive, multi-national peace process will be able to address all of these fears and build the foundation of lasting stability in Congo.

In order to support lasting peace in the region, Rwanda will likely seek increased border security, effective action to disarm anti-Tutsi

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<sup>362</sup> Compare GALULA, *supra* note 136, at 62–63 (“What is at stake [in a counterinsurgency campaign] is the country’s political regime, and to defend it is a political affair. Even if this requires military action, the action is constantly directed toward a political goal. Essential though it is, the military action is secondary to the political one, its primary purpose being to afford the political power enough freedom to work safely with the population.”), with COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at 40 (“The political and military aspects of insurgencies are so bound together as to be inseparable. Most insurgent approaches recognize this fact. Military actions executed without properly assessing their political effects at best result in reduced effectiveness and at worst are counterproductive. Resolving most insurgencies requires a political solution . . .”).

<sup>363</sup> S.C. Res. 1856, *supra* note 12, at 7.

<sup>364</sup> Author’s Field Research Experience, *supra* note 14.

<sup>365</sup> *Id.*

rebels, and protection of its business interests in the Kivus. Congolese officials, on the other hand, will want recognition of their sovereignty, consolidation of hegemony within the country, and freedom from continuing foreign intervention. Finally, all militia members will likely seek integration into national armed forces or assistance with reintegration into civilian society, as well as amnesty for their past combat activities. All of these powerful competing interests make a dedicated political peace process necessary for lasting peace in Congo.

The MONUC has been tasked with promoting “political dialogue.”<sup>366</sup> However, Security Council Resolution 1856 also stated that *past* peace conferences and agreements are the “appropriate framework for stabilizing the situation” in Congo.<sup>367</sup> This attitude of reliance on past negotiations must change. Past agreements have already failed to bring lasting peace to Congo, and past cease-fires have, without exception, been violated. In light of continuing instability in the region, *new* work is needed to promote political dialogue in the region. The U.N. should bolster its efforts to promote peace and disarmament talks and should use its political clout to apply pressure on the parties to the conflict. Additionally, the United States is an ideal broker for peace negotiations in the region, because it holds significant political capital with several key players, including a strong relationship with Rwanda and a generally positive perception among civilians in Congo’s east. A U.S. team, led by then-State Department Conflict Advisor Tim Shortley, deftly brokered a peace accord<sup>368</sup> in Goma in 2008, and continued U.S. expertise directed at building regional consensus for peace in Congo is sorely needed. Without such efforts, no military doctrine will be sufficient to build lasting peace in the region.

## V. Conclusion

Peacekeepers and counterinsurgents operating in the post-Cold War world face similar multi-dimensional conflicts. Both types of operation attempt to provide civilian security in complex, unconventional conflicts, and both have faced similar setbacks. However, counterinsurgency

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<sup>366</sup> *Id.* at 5–6.

<sup>367</sup> *Id.* at 2.

<sup>368</sup> Acte D’Engagement du CNDP at les Groupes Armés du Nord-Kivu pour la Paix, La Sécurité et le Développement Durables de la Province du Nord-Kivu, Jan. 23, 2008 [on file with author].

doctrine recently revolutionized U.S. military strategy in multidimensional conflicts, and there is no reason to believe it would not have a similar effect on U.N. peacekeeping.

Furthermore, the use of counterinsurgency doctrine in peacekeeping is valid under international law. Counterinsurgency doctrine is simply a strategic/operational conception of the way in which force can best be used in an effective, humanitarian manner, likely to promote long-term stability. Therefore, the lawfulness of using counterinsurgency doctrine in peacekeeping is dependent only on the lawfulness of the use of force more generally in peacekeeping. The use of force in Chapter VII-authorized peacekeeping missions, however, is both lawful and increasingly common, and, therefore, there is no obstacle under international law to the incorporation of counterinsurgency into peacekeeping mandates.

The MONUC has already been furnished with a Chapter VII mandate and is authorized to use force to secure civilians and disarm rebel groups. However, it is currently attempting to disarm rebels in a highly ineffective manner and with no centralized doctrine for how force should be applied. Counterinsurgency would furnish the mission with the tools it needs to bring lasting peace to Congo, but the doctrine has not yet entered the discourse on peacekeeping. This deficiency deserves to be swiftly remedied—failure to incorporate COIN doctrine into peacekeeping strategy would be tantamount to ignoring the most important military doctrinal innovation in more than a century, and it would carry significant humanitarian costs.

Of course, in order for this doctrinal change to be effected, peacekeeping's command structures will need to be overhauled, as will its strategy and ground operations. Such changes will not be easy to implement: The drive to introduce this massive change in U.N. policy and structure will no doubt require the expenditure of significant political capital. As Sarah Sewell notes in her introduction to the *Counterinsurgency Field Manual*, the costs of counterinsurgency are significant, but they are not inherently unbearable: "Willingness to bear them is a choice."<sup>369</sup> Effective military peacekeeping will require similar sacrifices, but the United States and the U.N. should choose to make those sacrifices.

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<sup>369</sup> Sewall, *Introduction*, in COUNTERINSURGENCY FIELD MANUAL, *supra* note 136, at xxxix.

The U.N. is currently spending upwards of \$1 billion per year on its peacekeeping mission in Congo,<sup>370</sup> yet more than five million people have died in the region since the inception of the war, and the death toll shows no signs of slowing.<sup>371</sup> Its decades-long presence in the region shows, at least, that international society still holds a basic commitment to humanitarian responsibility—global society is not ready to abandon the region into violence and collapse. Yet the U.N. has continued for years with an ineffective program that offers no hope of permanently ending the conflict.

The Security Council should be willing to expend more effort now to prevent decades more of suffering in the future. Endemic violence in Congo continues, and counterinsurgency doctrine provides a proven, effective framework for stabilizing the conflict. It will not be easy to implement counterinsurgency doctrine into U.N. peacekeeping operations. In ten years' time, however, it will be far more difficult to look back, after many more civilian lives have been lost, and justify the failure to take necessary action.

Finally, the United States can help. The United States has widespread technical and theoretical expertise with implementing counterinsurgency doctrine into stabilization programs. America should use its position on the Security Council to advocate for a counterinsurgency-informed reform of multilateral peacekeeping, and should assist the U.N. on the ground by providing technical assistance and training designed to improve host nation security and rule of law capacity. Peacekeeping reform is gravely needed: Current ineffective mandates have made U.N. teams seem, at best, incapable of preventing civilian atrocities. At worst, the teams can serve as symbols to the local populace of the outside world's disregard for their plight: As disorganized bands of rebels continue to rape and torture terrorized civilians, heavily armed and uniformed international soldiers exist passively nearby. Unsurprisingly, when military peacekeepers fail to use force to deter illegal armed groups, locals often begin to see the U.N. as

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<sup>370</sup> See U.N. GAOR, 63d Sess., 5th Comm., Agenda Item 132, at 2, U.N. Doc. A/C.5/63/25.

<sup>371</sup> See Int'l Rescue Comm., Mortality in the Democratic Republic of Congo: An Ongoing Crisis (2007), <http://www.theirc.org/resource-file/irc-congo-mortality-survey-2007>.

complicit in the violence.<sup>372</sup> Reversing this trend and promoting effective U.N. peacekeeping would serve U.S. national security interests and foreign policy goals. President Barack H. Obama recently remarked, “our nation is stronger and more secure when we deploy the full measure of both our power and the power of our values, including rule of law.”<sup>373</sup> Promoting counterinsurgency doctrine in peacekeeping would accomplish both: the doctrine incorporates forceful military action, security-sector capacity building, and rule of law operations focused on ending impunity and promoting human rights. Most importantly, however, the doctrine is likely to work: it might just make peace operations capable of actually delivering peace.

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<sup>372</sup> Author’s Field Research Experience, *supra* note 14. *See also* Hum. Rts. Watch, *supra* note 101 (“MONUC’s continued participation in operation Kimia II, against its mandate and the UN’s own legal advice, implicates UN peacekeepers in abuses.”).

<sup>373</sup> President Barack H. Obama, Address at Central Intelligence Agency Headquarters (Apr. 20, 2009), *available at* <https://www.cia.gov/news-information/speeches-testimony/president-obama-at-cia-html>.